

**Commission of Inquiry into
Money Laundering in British Columbia**

Public Hearing

Commissioner

The Honourable Justice
Austin Cullen

Held at:

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Tuesday, February 25, 2020

APPEARANCES

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Katherine Shelley Ashley Gardner	Canada
Ludmila Herbst, QC	Law Society of B.C.
Mark Swkarok Melanie Harmer John Russo	Great Canadian Gaming Corporation
Robin N. McFee Maya Ollek	James Lightbody
Christine Mainville	Robert Kroeker
David Gruber Meg Gaily	Gateway
Ron Usher John Mayr	Society of Notaries Public of B.C.
Paul Burns	Canadian Gaming Association
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Patrick Weafer	B.C. Real Estate Association
Megan Tweedie Emily Lapper	BCCLA

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1
Opening Statement by Mr. Gruber
Gateway Casinos and Entertainment Ltd.

Vancouver, B.C.
February 25, 2020

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2
3
4 THE REGISTRAR: All rise. The hearing has now
5 resumed.

6 THE COMMISSIONER: Yes, Mr. Martland.

7 MR. MARTLAND: Mr. Commissioner, we have a very slight
8 adjustment to the batting order. Mr. Gruber is
9 here on behalf of Gateway and he has a prior
10 commitment that means he can't stay through the
11 length of the day. So I'm suggesting, and Mr.
12 McFee has kindly acceded to this, that Mr. Gruber
13 might address you at the outset followed by Mr.
14 McFee on behalf of Mr. Lightbody.

15 And the other housekeeping point is that
16 there have been a few further written opening
17 statements that have been provided to us, and
18 those will be circulated as soon as we're able to
19 all participants by e-mail. So folks can expect
20 those if they don't have copies already.

21 THE COMMISSIONER: All right, thank you.

22 MR. MARTLAND: Thank you.

23 THE COMMISSIONER: Thank you, Mr. Martland. Yes, Mr.
24 Gruber.

25
26 OPENING STATEMENT BY MR. GRUBER (GATEWAY CASINOS AND
27 ENTERTAINMENT LTD.):
28

29 MR. GRUBER: Good morning, Mr. Commissioner. My name
30 is David Gruber, and along with Laura Bevan and
31 Meg Gaily, I am counsel for Gateway Casinos and
32 Entertainment Limited.

33 Mr. Commissioner, Gateway did provide you
34 with a written opening statement late last week
35 which sets out Gateway's position --

36 THE COMMISSIONER: Yes. Thank you.

37 MR. GRUBER: -- in respect of these proceedings.

38 We're content to rely on our written opening
39 statement, but we did observe that yesterday you
40 had some questions for some of the participants.
41 So we're here in the event you had any questions
42 arising from our written submission to address
43 those, and otherwise simply to thank you and look
44 forward to our further participation.

45 THE COMMISSIONER: I'm sorry. I just missed that last
46 line.

47 MR. GRUBER: And otherwise just to thank you for the

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James Lightbody

1 opportunity for Gateway to participate in these
2 proceedings.

3 THE COMMISSIONER: All right, thank you. Thank you,
4 Mr. Gruber.

5 MR. GRUBER: Thank you very much, Mr. Commissioner.

6 THE COMMISSIONER: Yes, Mr. McFee.

7

8 OPENING STATEMENT BY MR. MCFEE (JAMES LIGHTBODY):

9

10 MR. MCFEE: Yes, Mr. Commissioner. As you are aware,
11 but for the benefit of the audience, we represent
12 James, also known as Jim, Lightbody, who's the
13 President and CEO of the B.C. Lottery
14 Corporation, who's been granted standing here.

15 To outline who Mr. Lightbody is and what his
16 responsibilities are, he's been in a leadership
17 position with the B.C. Lottery Corporation since
18 2001, so long tenure. He joined the organization
19 as a Vice-President of Lottery Gambling, and for
20 the purposes of these proceedings, he's been in a
21 leadership position in the casino industry since
22 2011. From 2011 until January 2014, Mr.
23 Lightbody was BCLC's Vice-President for Casinos
24 and Community Gaming. And then in February of
25 2014, Mr. Lightbody was appointed President and
26 CEO of BCLC.

27 Mr. Lightbody is presently on medical leave,
28 but he's recuperating and he hopes to be back on
29 the job soon.

30 And Mr. Lightbody welcomes and supports this
31 Commission of Inquiry into Money Laundering in
32 British Columbia as a means of investigating and,
33 importantly, furthering enforcement efforts into
34 anti-money laundering in the province. And Mr.
35 Lightbody looks forward to assisting you in your
36 capacity as the Commissioner and Commission
37 counsel throughout the entirety of the process.

38 But more broadly, Mr. Lightbody looks
39 forward to the opportunity to work with the
40 Commission to help British Columbians better
41 understand the role of the B.C. Lottery
42 Corporation and the actions that the organization
43 has taken to improve anti-money laundering
44 controls as part of its ongoing -- and they are
45 ongoing -- efforts to safeguard British Columbia
46 casinos from illegal activity.

47 Now, as you've already heard, BCLC is the

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1 organization that conducts and manages commercial
2 gaming on behalf of the Province, including
3 casinos, lotteries, bingos and sports betting,
4 through multiple channels of distribution. And
5 for your purposes and for the purposes of this
6 inquiry, it's important to understand Mr.
7 Lightbody's role.

8 As President and CEO of BCLC, Mr. Lightbody
9 has a broad mandate within the organization. Mr.
10 Lightbody has provided leadership and direction
11 and strategy, marketing, and product development
12 as well as operational responsibilities for the
13 provision of products, services, and support for
14 patrons and business partners.

15 Mr. Lightbody has duties and
16 responsibilities in a range of areas, including
17 the areas of leadership, corporate strategy,
18 planning and reporting, policies and controls,
19 risk management, human resources, and external
20 relations.

21 It's a broad mandate, but broadly speaking,
22 Mr. Lightbody's responsibilities include:

23
24 - leading and managing the operations of
25 BCLC on a day-to-day basis in accordance
26 with the parameters established by the board
27 of directors of BCLC;

28
29 - providing overall leadership and vision in
30 developing the strategy and plans necessary
31 to realize the organization's objectives and
32 manage risks;

33
34 - and ensure strategy and annual plans are
35 effectively implemented, the results are
36 monitored and reported to the board, and
37 financial and operational objectives are
38 attained.

39
40 Importantly, Mr. Lightbody, as President and CEO
41 of BCLC, works with the board of directors to
42 develop and implement the vision, mission and
43 values of the organization.

44 Now, let me go on to how Mr. Lightbody can
45 assist the Inquiry and assist you and Commission
46 counsel in advancing the objectives of this
47 inquiry.

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Opening Statement by Mr. McFee
James Lightbody

1 As President and CEO of BCLC, Mr. Lightbody
2 has been working within the organization and with
3 a range of external organizations, enforcement
4 and regulatory agencies to respond to the extent,
5 growth and evolution of money laundering in the
6 gaming sector, and to implement measures to
7 complete BCLC's responsibilities to combat money
8 laundering.

9 Mr. Lightbody is also Chair of the B.C.
10 Horse Racing Management Committee, a position
11 that he's held for approximately five years. Mr.
12 Lightbody holds this position as part of his
13 mandate as CEO of BCLC, but it's a separate
14 position. The committee was formed to support
15 and direct the horse racing industry. It's a
16 collaboration between owners of Thoroughbreds,
17 owners of Standardbreds, and operators of the
18 race track -- that is, in this province, the
19 Great Canadian Gaming Corporation -- and includes
20 GPEB as a non-voting member. The committee is
21 responsible for the direction of the industry,
22 revenue distribution, and marketing and business
23 development investments. And Mr. Lightbody is
24 similarly presently on medical leave from that
25 position.

26 Now, as discussed by counsel for BCLC, BCLC
27 is mandated by the Province of British Columbia
28 to conduct and manage the commercial gaming
29 business in British Columbia in a socially
30 responsible manner for the benefit of all British
31 Columbians, that is, in a positive economic,
32 social and environmental way. And to that end,
33 as President and CEO, Mr. Lightbody's
34 responsibilities include:

35
36 - responsibility for fostering a corporate
37 culture that promotes ethical practices and
38 encourages individual integrity and social
39 responsibility; and

40
41 - ensuring that all operations and
42 activities of BCLC are conducted in
43 accordance with laws, regulations and BCLC's
44 policies and practices, including its Board-
45 approved Standards of Ethical Business
46 Conduct.
47

Opening Statement by Mr. McFee
James Lightbody

1 Mr. Lightbody takes pride in BCLC's social
2 responsibility mandate and has worked diligently
3 to help the organization fulfil this mandate.
4 BCLC's social responsibility mandate, coupled
5 with Mr. Lightbody's personal commitment to
6 social responsibility, underpins and guides his
7 leadership approach and management of the
8 organization, including in the area of anti-money
9 laundering.

10 Like all of the parties here today, Mr.
11 Lightbody shares the public concern about money
12 laundering in British Columbia. During Mr.
13 Lightbody's time in various leadership roles at
14 BCLC, BCLC as an organization and Mr. Lightbody
15 personally recognized the threat of money
16 laundering in the gaming sector.

17 As President and CEO of the organization
18 entrusted to conduct and manage commercial
19 gambling in British Columbia, Mr. Lightbody is
20 committed to protecting the gaming industry and
21 maintaining the trust of the people and
22 communities of British Columbia through the
23 ongoing commitment to anti-money laundering
24 initiatives. Mr. Lightbody takes his role within
25 the anti-money laundering system very seriously
26 and is personally committed to ensuring that BCLC
27 takes appropriate action when potential criminal
28 activity takes place in and around casinos.

29 Consequently, BCLC and Mr. Lightbody's
30 commitment to managing gaming in a socially
31 responsible manner has meant ensuring that the
32 organization did not ignore -- did not ignore --
33 the possibility of money laundering in the gaming
34 sector. For BCLC and for Mr. Lightbody, there
35 has never been a question of prioritizing revenue
36 growth for BCLC over combatting money laundering.
37 To do so would have been wholly inconsistent with
38 BCLC's mandate.

39 Now, there have previously been suggestions
40 in the media and allegations by some anonymous
41 sources, as you've seen, interviewed by Dr. Peter
42 German in preparation of his 2018 gaming industry
43 report, *Dirty Money: An Independent Review of*
44 *Money Laundering in the Lower Mainland Casinos*
45 *conducted for the Attorney General of British*
46 *Columbia*. And the suggestions are that BCLC's
47 senior management was aware of large amounts of

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James Lightbody

1 money that were proceeds of crime being
2 transacted in casinos, and that BCLC senior
3 management turned a blind eye to this, opting to
4 do nothing in response in order to maximize
5 profits. Mr. Lightbody anticipates that the
6 evidence that will be adduced before this
7 Commission will establish that this is an
8 inaccurate narrative, an entirely inaccurate
9 narrative, during the time that Mr. Lightbody was
10 in a leadership position as President and CEO of
11 BCLC.

12 The evidence will establish that contrary to
13 turning a blind eye to the possibility of money
14 laundering, Mr. Lightbody made active efforts to
15 be responsive to money laundering concerns in the
16 gaming sector. These efforts included efforts
17 towards greater coordination with organizations,
18 enforcement and regulatory agencies across the
19 industry, and with law enforcement, as well as
20 working within BCLC to address money laundering
21 concerns.

22 As you heard, BCLC is one of many working to
23 combat money laundering in the gaming sector.
24 These organizations and enforcement and
25 regulatory agencies also include service
26 providers, GPEB, FINTRAC, and law enforcement,
27 each of which play distinct and important roles.

28 BCLC collaborates with this network of
29 organizations, enforcement and regulatory
30 agencies to help protect casinos in British
31 Columbia by detecting, reporting and supporting
32 regulatory or law enforcement investigations
33 against anyone involved in money laundering.
34 BCLC's role includes, amongst other things,
35 providing information on specific activities to
36 authorities and, where necessary, refusing such
37 transactions.

38 Mr. Lightbody together with BCLC has worked
39 to draw attention to money laundering issues and
40 to press for more collaboration and coordination
41 across these different organizations, enforcement
42 and regulatory agencies involved in anti-money
43 laundering work in the casino industry in British
44 Columbia. This has included engaging regularly
45 with law enforcement and pressing for more
46 resources and enforcement. These efforts include
47 the following initiatives:

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James Lightbody

1 - Number 1: BCLC led an industry anti-money
2 laundering task force with service providers
3 and GPEB starting in 2011. This was a
4 cross-functional team of security,
5 compliance, regulator, policy, and operation
6 representatives.

7
8 - Secondly, BCLC saw the benefit of and
9 initiated -- and it's important to
10 understand that BCLC initiated -- an
11 information-sharing agreement with the RCMP
12 and other law enforcement agencies starting
13 in 2014. This was the first such initiative
14 in Canada.

15
16 - Thirdly, BCLC pressed for greater law
17 enforcement support from the RCMP and
18 government in 2015, which precipitated the
19 formation of the Joint Illegal Gambling
20 Investigation Team that BCLC supported and
21 funded.

22
23 Under Mr. Lightbody's leadership, BCLC has
24 taken steps in the context of the information
25 available at the time, and the existing systems
26 to respond to money laundering concerns with the
27 gaming sector as they emerged and evolved.

28 You will hear that as President and CEO of
29 BCLC, Mr. Lightbody prioritized anti-money
30 laundering initiatives and made his support for
31 such initiatives clearly known. Within BCLC, Mr.
32 Lightbody saw to it that BCLC committed resources
33 to anti-money laundering initiatives within the
34 organization and to continuously improving such
35 initiatives to position BCLC to respond with a
36 flexible and risk-based approach to money
37 laundering issues.

38 One example of BCLC's anti-money laundering
39 initiatives that occurred during Mr. Lightbody's
40 time as President and CEO of BCLC is the
41 expansion of the organization's anti-money
42 laundering investigation unit created in late
43 2013. This AML unit is staffed with certified
44 AML investigators and certified intelligence
45 analysts. It has authority to act independently,
46 including barring certain patrons, advising
47 casino service providers not to accept cash from

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James Lightbody

1 certain patrons, and working closely with
2 regulatory and law enforcement agencies,
3 including weekly meetings to discuss high-value
4 customers and transactions. During Mr.
5 Lightbody's tenure as President and CEO of BCLC,
6 the AML unit's size and resources expanded and
7 the leader of the AML unit was elevated within
8 the organization from a manager position to a
9 director position to reflect the priority being
10 given to anti-money laundering initiatives.

11 Under Mr. Lightbody's direction, BCLC also
12 worked to be responsive to and investigate
13 reports of money laundering occurring within the
14 gaming sector, including reports in the media.
15 You will recall that yesterday Mr. Skwarok, on
16 behalf of Great Canadian Gaming Corporation,
17 referred to the Ernst and Young report that was
18 commissioned in September of 2017. Now, as Mr.
19 Skwarok told you, the allegations involved a
20 Great Canadian facility. However, it's important
21 to recognize that it was BCLC under Mr.
22 Lightbody's direction that initiated that
23 analysis and study. And that analysis was an
24 analysis of cheques and patterns of play
25 pertaining to a set of defined money laundering
26 typologies at River Rock Casino Resort for a
27 three-year period, from January 1st, 2014, to
28 December 31st, 2016.

29 BCLC wasn't turning a blind eye. Mr.
30 Lightbody wasn't turning a blind eye. BCLC
31 commissioned this independent report following
32 allegations in the media that patrons were coming
33 to River Rock Casino with dirty money, buying
34 casino chips, playing notionally, and then
35 cashing chips in and receiving a cheque in
36 return. BCLC wanted to know if there were in
37 fact instances where anti-money laundering
38 controls had been compromised. Based on Ernst
39 and Young's analysis, BCLC was satisfied that
40 there was no systemic pattern of money laundering
41 activity relating to cheques issued by River Rock
42 Casino during this three-year period. BCLC was
43 transparent. BCLC released Ernst and Young's
44 analysis publicly and it is available on BCLC's
45 website. Since the timeframe of Ernst and
46 Young's analysis, BCLC continued to enhance its
47 anti-money laundering program to safeguard the

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James Lightbody

1 industry from the ever-evolving risks of criminal
2 activity.

3 In his capacity as President and CEO of
4 BCLC, Mr. Lightbody received and reviewed Dr.
5 German's 2018 gaming industry report with
6 interest. Mr. Lightbody has been instrumental in
7 directing BCLC's response to Dr. German's report.
8 However, Mr. Lightbody has identified a number of
9 inaccuracies in the report and frailties in its
10 underlying methodology, including, notably, as
11 you've also already been told by other counsel,
12 obtaining only minimal input from key people at
13 BCLC. And Mr. Lightbody welcomes the opportunity
14 to address his concerns with Dr. German's report
15 through this Commission's process.

16 Money laundering is a complex and constantly
17 evolving phenomenon. It demands, by its nature,
18 a collaborative and coordinated approach to anti-
19 money laundering initiatives across various
20 organizations and sectors. Mr. Lightbody agrees
21 wholeheartedly with the need for a greater
22 collaborative and coordinated approach between
23 those that work to eliminate money laundering
24 within the gaming sector and across sectors.
25 This means working towards greater clarity of
26 roles and responsibilities and a greater focus on
27 enforcement efforts, amongst other things. It is
28 critical to take a broad, multi-sectoral approach
29 to this issue, rather than approaching it in a
30 siloed fashion.

31 Continually striving to achieve the level
32 and quality of communication, cooperation, and
33 enforcement initiatives by various entities
34 involved in anti-money laundering is critical to
35 ensuring the overall integrity of casino gaming
36 and to public trust in this area.

37 Mr. Lightbody has been and is committed to
38 being part of the solution to address concerns
39 about money laundering in British Columbia and to
40 helping BCLC to continue to meet its own
41 responsibilities, to meet its responsibilities to
42 regulators, law enforcement, and the public, and
43 to work collaboratively with and in support of
44 all agencies to combat money laundering.

45 Mr. Lightbody welcomes the work of the
46 Commission as a means for investigating and
47 furthering enforcement efforts into anti-money

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Robert Kroeker

1 laundering in British Columbia. And Mr.
2 Lightbody looks forward to an opportunity to
3 actively work with the Commission and to share
4 information about the work that has been and
5 continues to be done in the gaming sector and by
6 BCLC in particular to respond to and address
7 money laundering concerns as these arise and
8 evolve. Similarly, Mr. Lightbody looks forward
9 to the opportunity to share information about his
10 role as Chair of the British Columbia Horse
11 Racing Industry Management Committee and that
12 organization's work in supporting anti-money
13 laundering initiatives.

14 In closing, Mr. Lightbody encourages the
15 Commission to take a broad, holistic approach to
16 understanding and making findings of fact about
17 money laundering in British Columbia. This
18 holistic approach must also underpin and inform
19 recommendations by the Commission for anti-money
20 laundering initiatives going forward that span
21 all potential industries that may be targeted by
22 criminals. It is critical to support a risk-
23 based, or standards-based, approach that is
24 flexible and able to readily respond to the
25 changing nature of money laundering as it
26 continues to evolve.

27 Mr. Commissioner, subject to any questions
28 you may have, those are our opening submissions.

29 THE COMMISSIONER: Thank you, Mr. McFee. Yes, Ms.
30 Mainville.

31 MS. MAINVILLE: Thank you. Good morning, Mr.
32 Commissioner.

33
34 OPENING STATEMENT BY MS. MAINVILLE (ROBERT KROEKER):

35
36 MS. MAINVILLE: I'm here on behalf of Ms. Henein and
37 myself, Christine Mainville, to deliver Mr.
38 Kroeker's opening statement.

39 Mr. Kroeker welcomes the Commission's work
40 and his ability to participate and provide his
41 full and unhindered cooperation in the process.
42 Mr. Kroeker has not yet been able to share his
43 knowledge of events with the public, nor has he
44 been afforded the opportunity to address the
45 disinformation that has been in the public
46 domain. He looks forward to being able to
47 testify under oath and provide relevant

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Robert Kroeker

1 information to the Commission. The truth needs
2 to be made known in respect of various false
3 assertions that have been made in this highly
4 politicized context on the state of money
5 laundering and anti-money laundering measures in
6 B.C.'s gaming industry. Transparency must be
7 brought to bear on this issue that is
8 legitimately very important to British Columbians
9 and beyond.

10 From September 2015 to July 2019, Mr.
11 Kroeker was Vice President of Legal, Compliance
12 and Security and Chief Compliance Officer at the
13 British Columbia Lottery Corporation. In this
14 capacity, Mr. Kroeker oversaw and monitored
15 compliance in B.C.'s casinos. BCLC's compliance
16 department worked alongside federal and
17 provincial regulatory agencies, other Crown
18 agencies, police, provincial and municipal
19 governments, as well as private sector service
20 providers. In other words, Mr. Kroeker dealt
21 with police; he dealt with the regulator; and he
22 had direct interactions with government officials
23 in the context of his employment at BCLC.

24 Before that, from November 2012 to September
25 2015, Mr. Kroeker was in charge of compliance and
26 regulatory affairs at Great Canadian Gaming
27 Corporation, GCGC, the operator of several gaming
28 facilities across Canada, including River Rock
29 Casino.

30 In 2006 up until 2012, Mr. Kroeker led the
31 creation, and subsequent operations, of the B.C.
32 Civil Forfeiture Agency. During this period, he
33 worked extensively with police and other
34 enforcement agencies across B.C., in addition to
35 U.S. officials collaborating with B.C. law
36 enforcement, exclusively on money laundering and
37 proceeds of crime matters. As Executive Director
38 of the Civil Forfeiture Office employed by B.C.'s
39 Ministry of Justice, he was responsible for the
40 conduct of more than 1,200 money laundering,
41 proceeds and instruments civil cases, which
42 resulted in the recovery of approximately
43 \$30 million in laundered proceeds. It was this
44 experience that led to his being called upon by
45 the provincial government in 2011, to review
46 controls on casinos implemented by BCLC and the
47 Gaming Policy Enforcement Branch, GPEB.

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Robert Kroeker

1 He has in-depth knowledge and understanding,
2 not only of gaming in British Columbia, but of
3 the events at the heart of this inquiry's
4 mandate.

5 Mr. Kroeker saw first hand the diligent work
6 that was done within BCLC and the casino service
7 operators in recent years to comply with anti-
8 money laundering legislation and regulations, to
9 prevent its occurrence, and to track down
10 offenders. Mr. Kroeker can also speak to the
11 obstacles he and other persons of good faith
12 encountered in their endeavours to address these
13 challenges.

14 When Mr. Kroeker arrived at Great Canadian
15 Gaming, FINTRAC had just completed its 2012
16 review, which had gone well. It was his
17 understanding that no money laundering
18 transactions had been detected during this
19 review, providing him with a certain level of
20 assurance regarding the controls in place at the
21 time. Nevertheless, Mr. Kroeker set out to
22 update GCGC's corporate level compliance plan.
23 He worked with BCLC, in particular Brad
24 Desmarais, who had taken on the lead compliance
25 role at BCLC around the same time that Mr.
26 Kroeker took up his at GCGC. They frequently
27 communicated regarding AML, anti-money
28 laundering, and worked together to enhance the
29 existing controls and to develop closer
30 connections to the police and GPEB.

31 While at Great Canadian Gaming, Mr. Kroeker
32 and colleagues at BCLC noticed an increase in
33 cash transactions and suspicious transaction
34 reports. They did not ignore it: they
35 introduced new measures to track and monitor
36 these transactions and the individuals involved.
37 The initial analysis showed that the increase in
38 transactions and STRs followed a general increase
39 in business in the casino sector. This was less
40 of a cause for concern than if the STRs had
41 increased where business was flat or declining.

42 Nevertheless, GCGC's efforts did not end
43 there. It submitted reports to FinTRAC, to the
44 regulator GPEB, to BCLC, and indeed conveyed this
45 information to law enforcement. Everyone was
46 aware of the rise in STRs, because GCGC -- and
47 BCLC -- made them aware. BCLC not only monitored

1 and analyzed the situation; it banned individuals
2 from B.C. casinos and tried to get the police and
3 the regulator to investigate. Both GCGC and BCLC
4 actively sought the intervention and assistance
5 of law enforcement and of the regulator, through
6 2013 and onward.

7 During Mr. Kroeker's tenure, it is
8 unquestionable that Great Canadian Gaming and
9 BCLC did not hinder anyone's work in
10 investigating money laundering and loan sharking:
11 quite the contrary. They urged investigations
12 and participated fully in providing information.

13 In April 2014, a senior RCMP officer who
14 specialized in proceeds of crime told Mr. Kroeker
15 that it would be very difficult for money to be
16 systematically laundered through a casino without
17 detection given the controls in place. The
18 vulnerability was around already laundered
19 proceeds being used to gamble. This was Mr.
20 Kroeker's assessment as well. The officer went
21 on to note that detecting proceeds of crime
22 coming in from a financial institution or another
23 source would be difficult for a casino to detect,
24 and indeed would require an extensive police
25 investigation. The casinos were doing their
26 part, the officer said. Still, BCLC and GCGC
27 continued to advocate for just such a police
28 investigation. They also continued to pass on
29 information obtained from player interviews and
30 surveillance, including about illegal casinos and
31 unregulated banking channels: what became the
32 central feature of the so-called "Vancouver
33 model."

34 This RCMP officer's observations have been
35 borne out. It is hoped that the Commission will
36 adduce the necessary evidence that demonstrates
37 that BCLC and the casinos it manages in fact have
38 a substantial range of money laundering controls.
39 B.C. has been an industry leader in anti-money
40 laundering, and their controls have received the
41 approval and backing of FINTRAC and police at
42 numerous points over the years. The "Vancouver
43 model" of money laundering does not involve money
44 being laundered through the casinos, in any
45 traditional sense. Rather, the model involves
46 money being laundered through financial
47 institutions and unregulated banking channels,

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1 away from gaming facilities, and provided to
2 otherwise bona fide gamblers, who appear to be
3 engaging in these activities as a way of getting
4 around restrictions on money exiting China.
5 Illegal schemes working in the financial sector
6 and away from legal casinos are at the center of
7 this model.

8 GCGC and BCLC reported the information it
9 had regarding these potential illegal operations
10 to law enforcement and asked that they be
11 investigated. For such illegal operations to be
12 tackled, officers with police powers of
13 investigation needed to get involved. Inaccurate
14 descriptions and loose language have persistently
15 been used in the public domain, leading to
16 misinformation and a misperception about what the
17 real issue of significance is: the risk that
18 proceeds of crime, already laundered through
19 other sectors including the financial sector and
20 legitimate gamblers with substantiated wealth,
21 were being gambled at casinos. The work of this
22 Commission will be critical to clarify the real
23 issues, the real sources of money laundering, and
24 the appropriate responses.

25 In June 2014, BCLC instituted, as we've
26 heard, an information sharing agreement with the
27 RCMP so that the police had ready access to
28 information it required to investigate. This
29 would also allow BCLC to create a proactive
30 player banning program. At times, GCGC and BCLC
31 were led to believe that the police would
32 investigate, and did believe investigations were
33 in fact taking place. They urged GPEB to also
34 use their investigative powers to investigate.
35 Alarms were raised. But over time, Mr. Kroeker
36 saw no evidence of any police investigations
37 taking place and began to suspect that no
38 investigative steps were in fact being taken.

39 In April 2015, Mr. Desmarais and Mr. Kroeker
40 learned that the RCMP's Federal Serious and
41 Organized Crime Unit, the FSOCU, would finally
42 open an investigation into BCLC's complaints.

43 The gaming industry, including BCLC, also
44 welcomed the creation of the Joint Illegal Gaming
45 Investigations Team, JIGIT, in 2016 in the midst
46 of the MNP report.

47 The Commission should also hear about the

1 other significant steps that Mr. Kroeker took
2 while in charge of compliance at Great Canadian
3 Gaming. In late 2014, GCGC noticed an increase
4 in missing casino chips -- called "chip
5 liability" -- which raised concerns of the chips
6 being used in underground banking, underground
7 casinos, or as stored value instruments by
8 organized crime. GCGC reported the issue to BCLC
9 and both started to monitor the situation more
10 closely. In early 2015, Mr. Kroeker devised a
11 chip replacement plan to take place on very short
12 notice. BCLC's Brad Desmarais was on board, and
13 the replacement was set to proceed. Notices to
14 players went up so that legitimate customers
15 could return their chips to the casino before the
16 replacement date. This replacement would render
17 valueless all chips not returned by legitimate
18 players, and would have proven to be a
19 significant problem for anyone operating an
20 illegal scheme with vast amounts of casino chips.
21 Under the replacement plan, if there was no
22 record of the individual returning chips having
23 purchased them, these would not be honoured and
24 the individual would not be paid in exchange for
25 their chips.

26 For reasons that remain unclear, GPEB
27 directed that the chip replacement not proceed at
28 the last minute. It eventually took place in
29 January 2016, but the delay was problematic from
30 GCGC and BCLC's perspectives. Because notices
31 had gone up months earlier, the delay gave
32 nefarious actors the opportunity to slowly and
33 progressively return their chips to the casino
34 over time in ways that avoided detection. It
35 removed BCLC's ability to identify and interview
36 individuals that appeared to have acquired chips
37 inappropriately and to take measures against
38 those individuals. It is hoped that the
39 Commission will be able to shed light on what
40 transpired in that instance.

41 When Mr. Kroeker then joined BCLC in
42 September 2015, he became privy to recently
43 acquired information from the RCMP suggesting
44 that approximately 10 to 36 customers were
45 acquiring their funds from illegal sources.
46 Mr. Kroeker immediately ramped up BCLC's source
47 of wealth and funds program. Source of fund

Opening Statement by Ms. Mainville
Robert Kroeker

1 interviews became mandatory in all instances
2 where there were any concerns regarding the
3 source of a player's funds, if the player engaged
4 in large cash transactions. While it is not
5 possible to identify a direct cause and effect,
6 since that point in time when Mr. Kroeker took up
7 the compliance reigns at BCLC, there has been a
8 closely correlated decline in suspicious
9 transactions at B.C. casinos, both in terms of
10 number and value. In other words, the STR
11 decline commenced in the latter part of 2015 as a
12 result of actions taken by BCLC, and cannot
13 simply be credited to later policy changes.

14 Indeed, by August 2016, the number of STRs
15 declined by 45 percent and the dollar value of
16 suspicious transactions had dropped by 80
17 percent. Revenue from high bet limit tables had
18 declined by \$120 million due to refused players
19 and transactions. Over a similar period, the
20 total value of individual LCTs, large cash
21 transactions, of \$20,000 or more had declined by
22 \$162 million or 66 percent, and the total value
23 of LCTs over \$50,000 had declined by \$130 million
24 or 80 percent. In their public disclosures
25 through late 2015 and 2016, GCGC opined in their
26 Management Discussion and Analysis, MD&A, that
27 table revenue was in decline at River Rock due to
28 new controls BCLC had put in place. By December
29 2017, the number of STRs had dropped by 72
30 percent from July 2015, and the value of those
31 transactions dropped from over 27.4 million to
32 2.6 million, or 90 percent.

33 THE COMMISSIONER: Are these numbers across the board,
34 Ms. Mainville? That is, do they relate to all
35 the casinos?

36 MS. MAINVILLE: Yes, I believe that's accurate. And I
37 can provide the source, if the Commissioner
38 wishes, afterwards. Except where I specify at
39 River Rock.

40 THE COMMISSIONER: Right.

41 MS. MAINVILLE: It is also important for the
42 Commission to provide much needed context to the
43 public discourse. And this has been alluded to,
44 but it needs to be made very clear. For years,
45 prior to 2012, the regulator required casinos to
46 deal only in cash. Everything else was
47 prohibited. This means that very high volumes of

Opening Statement by Ms. Mainville
Robert Kroeker

1 cash would necessarily flow through the casinos.
2 All casino customers had to come to a casino with
3 bank notes to gamble. There was no authorized
4 alternative. Customers were not permitted to use
5 debit cards, credit cards, bank drafts, cheques,
6 bank transfers, electronic funds transfers, money
7 orders, or any other form of payment. Only cash.

8 With casinos operating under BCLC contract
9 conducting more than \$8 billion in transactions
10 annually, this restriction imposed by the
11 regulator meant that massive amounts of cash were
12 necessarily handled by casino operators. This
13 created a major money laundering risk as the
14 volume of cash moving in and out of casinos makes
15 it very difficult to distinguish illegitimate
16 cash from legitimate cash. Dr. Peter German Q.C.
17 stated in his first report, *Dirty Money*, that
18 "casinos are attractive to money launderers
19 because they deal in cash." Casinos, he said,
20 are "overwhelmed by cash." There can be no
21 doubt, then, that implementing cash alternatives
22 is important. Contrary to Dr. German's views, it
23 was an important facet of BCLC's work in
24 addressing money laundering risks.

25 Mr. Kroeker identified this issue when he
26 was appointed in 2011 to conduct a summary review
27 of anti-money laundering measures in B.C. He
28 recommended the immediate introduction of
29 alternatives to cash in B.C.'s gaming facilities,
30 as is done in other jurisdictions around the
31 world. Non-cash forms of payment are preferable,
32 first, because they provide a paper trail and
33 allow for better tracking of the movement of
34 funds. They thereby facilitate investigations.
35 Indeed, where money laundering concerns arise and
36 an investigation is appropriately undertaken,
37 non-cash transactions allow diligent and skilled
38 investigators to follow the document trail.
39 Transactions coming directly from a bank are
40 traceable and carry a lower risk of money
41 laundering than cash transactions.

42 Secondly, if less cash flows through
43 casinos, it becomes easier to track dirty cash
44 and money laundering schemes and take more
45 targeted action. It allows gaming facilities to
46 focus their AML attention on the higher risk
47 customers who, despite alternatives, continue to

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Robert Kroeker

1 play with high volumes of cash. When only cash
2 is permitted, it is more challenging to
3 differentiate between legitimate cash and
4 illegitimate cash.

5 Since Mr. Kroeker's 2011 summary report, a
6 number of cash alternatives have been introduced
7 in B.C.'s casinos. This is an improvement.
8 Still, that process faced obstacles and cash
9 alternatives took longer to introduce than BCLC
10 had hoped. And despite ongoing efforts on the
11 part of BCLC to move customers to more secure
12 lower-risk transactions, to this day the vast
13 majority of transactions at B.C. casinos are
14 cash. Disassociating legitimate cash from
15 illegitimate cash therefore remains a concern.
16 More does need to be done on that front, and that
17 should be explored by this Commission.

18 Nevertheless, during Mr. Kroeker's tenure at
19 GCGC and BCLC, cash transactions of significance
20 were systematically detected and reported to
21 police, to FINTRAC, and to the regulator, GPEB.
22 Suspect incidents and transactions were looked
23 into and reported. And as I've indicated,
24 significant pushes were made for police and
25 others to investigate suspicious players and
26 incidents, largely without success. Efforts were
27 made to reduce the amount of cash entering
28 casinos, and to address other money laundering
29 concerns, with some obstacles being placed in
30 BCLC's way.

31 For instance, for a long time, because BCLC
32 was only authorized to deal in cash, payouts to
33 customers beyond \$10,000 also had to occur in
34 cash. Of course, there are money laundering
35 risks associated with large cash payouts.
36 Remitting large sums of money by way of a
37 traceable cheque is certainly preferable. The
38 banking sector in fact expressed concerns over
39 the large amount of bank notes being paid out to
40 casino customers that they could not track,
41 requesting that alternatives be introduced.

42 When at BCLC, Mr. Kroeker and his team
43 attempted to limit cash payouts by requesting
44 from GPEB that the \$10,000 limit on return of
45 funds cheques be removed. The ability to issue a
46 cheque in a greater amount would also allow BCLC
47 to implement a daily limit of \$25,000 on cash

Opening Statement by Ms. Mainville
Robert Kroeker

1 payouts. BCLC also sought authorization from
2 GPEB to remove the requirement that a minimum of
3 \$10,000 be deposited into a casino account to
4 enable greater use of these traceable accounts,
5 which require non-cash deposits. Despite these
6 changes initially being endorsed by GPEB in 2018,
7 there has since been a change in position for
8 reasons unknown to Mr. Kroeker. He hopes this
9 Inquiry will shed light on the issue and
10 recommend a pathway forward, because despite
11 BCLC's efforts, to the best of Mr. Kroeker's
12 knowledge, these money laundering risks remain.

13 In recent years, BCLC has also endeavoured
14 to introduce additional AML measures as risks
15 continue to be identified and tackled, but it has
16 not been able to operate freely to implement
17 these changes as it sees fit. This is a cause
18 for concern that should be addressed by this
19 Commission.

20 The Commission should hear evidence about
21 one measure that Mr. Kroeker was able to
22 implement, that is a ban on funds emanating from
23 money service businesses including Money Mart and
24 Western Union. In mid-2015, the Government of
25 Canada's updated National Inherent Money
26 Laundering Risk Report gave MSBs the highest risk
27 rating: Very High Vulnerability. After some
28 players interviewed by BCLC indicated they were
29 obtaining their cash from MSBs, the AML Unit
30 under Mr. Kroeker's direction conducted a review
31 with the aim of devising policies and controls
32 specific to MSBs. Ultimately, MSBs were deemed
33 too high risk and funds emanating from any MSB
34 were banned altogether in B.C. casinos.

35 There have been reports of money laundering
36 concerns as it relates to some of the cash
37 alternatives that have been introduced in B.C.'s
38 casinos, such as cheques and bank drafts. As my
39 friends from GCGC and Mr. Lightbody alluded to,
40 some of these reports are wrong, and they need to
41 be corrected by this Commission. When various
42 claims were reported, or were brought to his
43 attention internally, Mr. Kroeker's reaction was
44 that they could not be correct, absent BCLC's
45 system having been compromised, and he had no
46 indication of that occurring. Mr. Kroeker knows
47 what it is possible to do and not possible to do

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Robert Kroeker

1 in a casino given the controls in place. These
2 reports suggested problems that either could not
3 occur given the systems in place, or that were
4 stringently controlled for and had not been
5 identified.

6 For instance, it has been suggested that
7 BCLC customers are laundering cash by depositing
8 it in casino customer accounts and almost
9 immediately withdrawing it. But cash cannot be
10 deposited in a casino account. BCLC's anti-money
11 laundering controls do not allow for it. In
12 other words, such a scheme is impossible. Since
13 they were introduced in 2012 following Mr.
14 Kroeker's review, casino customer accounts can
15 only be held in the name of the customer, and
16 cash cannot be deposited in these accounts.
17 Moreover, funds can only be received in a casino
18 customer account if they emanate from a Canadian
19 bank or credit union, or from a top-50 American
20 bank, no other international funds. If those
21 funds are not clean, what needs to be asked, and
22 what should be a focus of this Commission, is how
23 they made it into the Canadian and the U.S.
24 banking systems in the first place.

25 There are similar restrictions on the
26 provenance of funds in the case of cheques, debit
27 cards and electronic fund transfers, all of which
28 were also introduced in 2012. With one exception
29 -- verified wins from another casino -- the funds
30 must be sourced from a Canadian financial
31 institution or a top U.S. bank. These entities
32 are subject to money laundering regimes and
33 overseen by FINTRAC in Canada and FinCEN in the
34 United States, which, while not definitive,
35 should give some assurance the source of the
36 funds has been vetted and is more likely to be
37 legitimate.

38 In another case, it was reported that
39 players were able to buy in with large amounts of
40 cash and subsequently cash out cheques with
41 little to no play having been conducted. BCLC
42 has had tight controls on the issuance of cheques
43 for a long time. Casinos may only issue a cheque
44 to customers in limited circumstances, and cheque
45 issuance is closely monitored by BCLC for
46 indicators of money laundering.

47 Despite doubts regarding the accuracy of the

1 reports and claims that have been made, Mr.
2 Kroeker and BCLC took them at face value and
3 diligently followed up on them. They deemed it
4 necessary to undertake comprehensive reviews or
5 audits of BCLC's processes. In one instance
6 that's been referred to a couple of times before
7 you, Mr. Commissioner, they engaged an
8 independent, well reputed, external auditor,
9 Ernst and Young Advisory, based out of New York
10 City, to review and audit every single cheque
11 issued over a three-year period -- 2014 through
12 2016, which were selected based on the
13 information contained in the media reports -- to
14 identify any such concern. E.Y. found no
15 evidence of cash being laundered through casinos
16 in the manner alleged in the media reports.

17 In another instance, Mr. Kroeker tasked
18 BCLC's AML team to locate and inspect every bank
19 draft written over a near two-year period for
20 every casino in B.C., in the face of allegations
21 that BCLC customers were using anonymous bank
22 drafts purportedly purchased with proceeds of
23 crime. Again, BCLC had tight controls on bank
24 drafts and had seen none of the activity alleged.
25 This review also concluded that not a single bank
26 draft presented the defects that had been
27 reported.

28 In other words, the results of in-depth
29 reviews found that the reported claims were
30 unfounded. Mr. Kroeker looks forward to this
31 information being laid out by the Commission, so
32 that the public may be properly informed.

33 B.C.'s casinos are subject to numerous
34 independent compliance reviews and AML audits.
35 Aside from in-depth FINTRAC reviews and GPEB
36 reviews, biennial reviews are statutorily
37 mandated and conducted by external auditors such
38 as PricewaterhouseCoopers and E.Y., Ernst and
39 Young. B.C. has regularly gotten reviews clean
40 of any substantive adverse findings, and indeed
41 has been complimented on its controls by
42 oversight bodies like FINTRAC and law enforcement
43 officials. FINTRAC's reviews of BCLC have
44 largely been positive.

45 Much has been made of the Administrative
46 Monetary Penalty imposed on BCLC in 2010 -- prior
47 to Mr. Kroeker's tenure -- and the litigation

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1 that ensued. But as BCLC stated at the time, at
2 the time the litigation ended, this AMP followed
3 technical deficiencies arising from a new
4 computer communications link between FINTRAC and
5 BCLC. Those deficiencies were quickly remedied,
6 and it was confirmed that "at no time did any
7 money laundering transactions occur." The
8 litigation ended with FINTRAC consenting to the
9 appeal being allowed and the fine against BCLC
10 being set aside by the Federal Court. Not, as
11 Dr. German wrote, "in a draw."

12 When Dr. German recommended as an interim
13 measure that a source of funds declaration be
14 obtained for all cash transactions of more than
15 \$10,000, with an exception for initial
16 transactions by new customers, the public should
17 know that BCLC went farther. It did not
18 implement the exception, which was laxer than
19 existing controls and fell outside of BCLC's risk
20 tolerance. There was also no way to track new
21 customers and the number of transactions they
22 engaged in in real time. And at Mr. Kroeker's
23 direction, BCLC continued to probe the source of
24 funds in the case of suspicious transactions
25 irrespective of dollar value -- so indeed beneath
26 the \$10,000 threshold -- based on a risk
27 assessment of the customer and the transaction.
28 As I've mentioned, BCLC already required source
29 of funds interviews to be conducted, and they
30 believed they should occur in all suspicious
31 instances, not just when the large cash
32 transaction threshold was met. This is one
33 example of how a risk-based or standards-based
34 model can operate more robustly than a
35 prescriptive model with overly precise, and
36 constrained, requirements. BCLC's compliance
37 team made sure that the existing risk-based
38 controls continued to apply to all transactions
39 irrespective of dollar value. It also went
40 beyond Dr. German's source of funds declaration
41 which required players to simply provide
42 information regarding the financial institution
43 and bank account from which the funds were
44 sourced, to require a same-day receipt for the
45 funds to be presented to and retained by the
46 casino.

47 So let's be clear. During Mr. Kroeker's

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Robert Kroeker

1 tenure at GCGC and then BCLC, they took action.
2 Despite this, BCLC's compliance approach was the
3 subject of some criticism by Dr. German in his
4 first report. In certain instances, Dr. German
5 gave credit to GCGC or GPEB, with no recognition
6 of the fact that BCLC's actions or information
7 led to the relevant changes being initiated.

8 The Commission is tasked with reviewing and
9 "taking into consideration" Dr. German's reports,
10 among others. It is imperative that
11 mischaracterizations and errors in these reports
12 be addressed publicly and corrected. As you've
13 already heard from a few of my colleagues,
14 Dr. German never met with Mr. Kroeker
15 individually or sought out Mr. Kroeker's detailed
16 knowledge of BCLC. Dr. German's only interaction
17 with Mr. Kroeker, as was pointed out, on money
18 laundering controls during his review was a
19 single hour-and-a-half group meeting.

20 Improvements can no doubt be brought to bear
21 on BCLC's AML program and the overarching
22 compliance regime. But the public should not be
23 misled about the past and current state of anti-
24 money laundering measures and controls and the
25 good faith and due diligence exercised by BCLC
26 and casino employees over time.

27 Contrary to what some in the public may have
28 come to expect, under Mr. Kroeker's watch, BCLC
29 was open to the possibility of no longer offering
30 high bet limit table play, should that have been
31 deemed advisable. BCLC was also prepared to
32 impose a cap on cash transactions. In fact, it
33 studied this option and saw no issue with its
34 adoption. Dr. German ultimately recommended that
35 no cash cap be imposed, but one could be
36 implemented should the regulator see fit to
37 impose one. Whether a cash cap is in order or
38 not will be for the Commission to determine, but
39 the following should be made clear to the public:
40 if they are concerned about large bags of cash
41 entering casinos, a cash cap is the only way to
42 change that reality. That is because legitimate
43 cash can also travel in bags. And indeed it
44 does. Many players with what is by all
45 appearances legitimately sourced cash, will also
46 use bags to carry it. What we have seen in
47 heavily publicized images and videos is still

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1 permitted today, in full abidance of Dr. German's
2 recommendations and directives issued by the
3 regulator. Without a cash cap, it will continue.

4 We expect the Commission will find that
5 throughout, Mr. Kroeker has acted with integrity
6 and in full cooperation with the Province and the
7 regulators. He has discharged his compliance
8 duties on behalf of BCLC honourably. And in one
9 specific instance, on which Mr. Kroeker may now
10 comment, he intends to defend against an
11 anonymous and malicious claim that he instructed
12 staff at BCLC to "ease up" on anti-money
13 laundering measures and "allow dirty money to
14 flow into casinos." He not only fully denies
15 that this, or anything like it, ever took place.
16 He has been cleared of this false allegation.
17 Indeed, on November 1st, 2019, after an in-depth
18 investigation, Mr. Kroeker was notified by GPEB
19 that the allegations were deemed "unfounded" and
20 the matter was now closed.

21 Government and various social programming
22 offered by government depend on casino revenue.
23 BCLC does not. Aside from the costs related to
24 running the enterprise, profits go to government.
25 In other words, any conflict of interest does not
26 lie with BCLC, unless it is not acting
27 independently from government. The Commission
28 may therefore wish to consider whether there is a
29 need for BCLC to operate with greater
30 independence from government, with appropriate
31 oversight by an independent board and an
32 independently operating regulator.

33 Unfortunately, the truth has been obfuscated
34 by partisan interests and other questionable
35 motivations. There are errors and falsities in
36 the public discourse surrounding this issue,
37 leading to a skewed understanding of casinos'
38 vulnerabilities to money laundering, to the
39 detriment of other, more vulnerable, sectors.
40 There are several inaccuracies and
41 inconsistencies in Dr. German's *Dirty Money*
42 report, as you've heard, not the least of which
43 is the suggestion that no one did anything.
44 During Mr. Kroeker's tenure, the gaming industry,
45 including GCGC and BCLC, were at the forefront of
46 the actions that were taken in respect of
47 preventing money laundering and detecting illegal

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Canadian Gaming Association

1 networks operating with proceeds of crime. They
2 were monitored, and they complied. They asked
3 for investigations, and were repeatedly ignored.
4 We are confident that by the end of this process,
5 the public will be fully informed.

6 The Commission should have an accurate and
7 full factual foundation to make recommendations
8 in the public interest and devise solutions to
9 real problems. I am confident that Mr. Kroeker's
10 participation will enhance the Commission's
11 ability to have a fair, accurate and complete
12 picture of the significant actions taken by BCLC
13 and others over the years in respect of money
14 laundering concerns in the gaming industry, and
15 of the true gaps and failures in the system.

16 Thank you, Mr. Commissioner.

17 THE COMMISSIONER: Thank you, Ms. Mainville. Yes, Mr.
18 Martland.

19 MR. MARTLAND: Mr. Commissioner, I thought I might
20 just rise to canvass, but we have the Canadian
21 Gaming Association, Mr. Burns is next on our
22 batting --

23 THE COMMISSIONER: Yes.

24 MR. MARTLAND: -- roster, but I don't know if it's
25 preferable that he start now or we go to break or
26 whatever.

27 THE COMMISSIONER: Why don't we take 15 minutes now.

28 MR. MARTLAND: Thank you.

29 THE COMMISSIONER: Thank you.

30 THE REGISTRAR: Order. The hearing will recess for 15
31 minutes. Please remain standing in place while
32 the Commissioner exits the room.

33
34 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
35 (PROCEEDINGS RECONVENED)

36
37 THE REGISTRAR: The hearing is now resumed.

38 THE COMMISSIONER: Yes, sir.

39
40 OPENING STATEMENT BY MR. BURNS (CANADIAN GAMING
41 ASSOCIATION):

42
43 THE COMMISSIONER: Yes, sir.

44 MR. BURNS: Good morning and thank you to the
45 Commission for the invitation to appear here
46 today.

47 The Canadian Gaming Association is a

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1 national trade industry association working to
2 advance the evolution of Canada's gaming
3 industry. Our members are the leading gaming
4 operators and suppliers to the industry,
5 including organizations like Gateway Casinos,
6 Caesars Entertainment, Hard Rock Casinos, Mohegan
7 Sun Entertainment, Scientific Games,
8 International Game Technology and actually many
9 of Canada's leading law firms.

10 The CGA interactions with our industry and
11 stakeholders are guided by set of principles:

- 12
- 13 - We believe in gaming as a legitimate form
14 of entertainment and a positive contributor
15 to our communities;
 - 16
 - 17 - We promote responsible use of our
18 industry's products;
 - 19
 - 20 - We are Canada-wide and nationally focused;
 - 21
 - 22 - We balance the interests of our various
23 stakeholders; and
 - 24
 - 25 - We seek insights to help the industry
26 innovate.
 - 27

28 Through advocacy and awareness, promoting
29 research and innovation, we work to build a
30 stronger understanding of our industry.

31 To give you a small snapshot of Canada's
32 gaming industry:

- 33
- 34 - It directly employs more than 182,000
35 Canadians contributing \$11.9 billion in
36 total labour income, with an average annual
37 salary of \$65,000.
 - 38
 - 39 - Purchases more than \$14.6 billion annually
40 in goods and services.
 - 41
 - 42 - Produces \$18.9 billion of valued-added GDP
43 to the Canadian economy.
 - 44

45 Nationally, the industry generates over
46 \$9 billion for governments and charities each
47 year.

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1 Here in British In British Columbia, the
2 gaming industry plays a vital part in the
3 provincial economy by employing over 29,000
4 people and generating over \$5 billion in economic
5 activity.

6 Canada's gaming industry is one of the most
7 highly regulated industries in the country, as
8 virtually every facet of the gaming industry is
9 subject to regulatory oversight. Complying with
10 the provincial regulatory frameworks as well as
11 applicable provincial and federal legislation is
12 fundamental to the day-to-day operations of
13 casinos across Canada.

14 At every level of employee, there is
15 responsibility and accountability to adhering to
16 this regulatory oversight to ensure the casino
17 industry can continue to be not only compliant,
18 but also to ensure we remain an enjoyable,
19 dependable source of entertainment for the
20 millions of adult customers we have here not only
21 in British Columbia and across the country.

22 The success of our business is built upon
23 upholding the public trust -- of governments,
24 regulators and customers -- by delivering fair
25 games in safe and secure gaming environments.
26 And we build on that trust through rigorous
27 regulatory oversight, testing of gaming products,
28 strong internal controls and polices, and world-
29 leading responsible gaming programs.

30 To accomplish this and to operate in
31 compliance with the regulatory structure,
32 applicable laws, and enforcement agencies, the
33 casino industry has committed extensive resources
34 to ensuring these functions like surveillance,
35 security and compliance can meet these
36 obligations.

37 Quite simply, regulatory oversight is built
38 into the DNA of our industry.

39 We are committed to rigorous regulatory
40 oversight and being be a strong partner in
41 Canada's anti-money laundering regime. We
42 continue to do this by collaborating with
43 FINTRAC, provincial gaming agencies and law
44 enforcement, as we recognize that Canada's AML
45 regime operates on the basis of really three
46 interdependent pillars: prevention and
47 detection, disruption and enforcement, and policy

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1 and coordination. In short, it's a partnership
2 that is strongest when we all work together.

3 So today I'd like to focus my remarks on the
4 three pillars.

5 Talking about prevention and detection. For
6 casino operators, their primary role is
7 prevention and detection through compliance with
8 anti-money laundering regulations and identifying
9 suspicious transactions, large cash transactions
10 and casino disbursements. We then report that
11 information not only to FINTRAC, but also to
12 gaming regulators and directly with law
13 enforcement as needed.

14 Our industry's commitment to combatting
15 financial crime is demonstrated by the deployment
16 of a large number of dedicated and well trained
17 security, surveillance and compliance
18 professionals. We also use sophisticated tools
19 such as state-of-the-art surveillance and
20 information management systems to monitor, record
21 and analyze activities.

22 Our compliance programs are regulated and
23 audited by independent third-party firms,
24 provincial regulators and FINTRAC themselves.

25 Despite the attention and media stories
26 surrounding the issue of money laundering in
27 Lower Mainland casinos, to the best of my
28 knowledge it has never been asserted that gaming
29 operators failed to detect and report suspicious
30 activities in accordance with anti-money
31 laundering regulations.

32 In fact, one GPEB report cited in the first
33 report by Dr. German stated that:

34
35 It is believed that Casino Service
36 Providers...are in fact being diligent and
37 forthright in expediently reporting
38 Suspicious Currency Transactions and other
39 matters of wrongdoing via Section 86
40 reports.

41
42 This is an important point. While we are always
43 looking to improve our compliance programs, there
44 is every indication that gaming operators are
45 playing their part in the anti-money laundering
46 regime.

47 With casino reporting representing less than

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1 two percent of the total reports received by
2 FINTRAC in any given year, we highly value the
3 industry's relationship with FINTRAC. We know
4 the value our reports provide to their analysts
5 in "following the money." They have been good
6 partners to industry over the years by working on
7 refinements and improving the reporting
8 relationship.

9 Our industry also participates with the
10 Department of Finance industry advisory group,
11 and on several occasions, we have welcomed the
12 participation of Department of Finance and
13 FINTRAC officials for our industry's annual
14 conference, the Canadian Gaming Summit.

15 In short, gaming operators are delivering on
16 their pillar of Canada's AML regime: the
17 prevention and detection of money laundering.

18 On to disruption and enforcement. There is
19 a need for increased efforts by law enforcement.

20 In its 2016 mutual evaluation of Canada, the
21 Financial Action Task Force noted in its key
22 findings that: "Law enforcement results are not
23 consummate with the [money laundering] risk and
24 asset recovery is low." This observation was
25 really reinforced by RCMP Assistant Commissioner
26 Joanne Crampton during her testimony to the House
27 of Commons Standing Committee on Finance in 2018,
28 where she said:

29
30 Due to time constraints, resource
31 limitations, and the efficacy of prosecuting
32 certain charges over others in these dynamic
33 and complex cases, following through on
34 proceeds of crime or money laundering
35 charges is not often tenable.
36

37 Part of the Commission's terms of reference
38 involves looking at barriers to effective law
39 enforcement respecting money laundering in
40 British Columbia. And I do want to focus of the
41 need to enhance resources for law enforcement.

42 Across Canada, the gaming industry has a
43 strong and productive working relationship with
44 law enforcement. It is critically important that
45 there are resources for the industry's reporting
46 efforts to be acted upon. Awareness of police
47 investigations and the ensuing arrests or

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1 seizures are visible outcomes and deterrents, as
2 well as proof that the system works.

3 Law enforcement needs to be adequately
4 trained not only in investigating money
5 laundering and other financial crimes, but also
6 to have a deep understanding of the industries
7 they are actually investigating. Committed,
8 long-term funding with permanent units will allow
9 law enforcement to build the expertise to be more
10 effective in all areas of AML enforcement
11 including data analysis or forensic accounting.

12 On to policy and coordination. The CGA
13 believes sound policy and coordination among
14 stakeholders are critical to the foundation and
15 the success of Canada's AML regime.

16 In Canada's gaming industry, the designation
17 of the entity responsible for federal anti-money
18 laundering compliance largely falls to the
19 "government of a province" that "conducts and
20 manages" gaming in accordance with the *Criminal*
21 *Code*. Most provinces have created Crown
22 corporations to conduct and manage gaming, so the
23 responsibility for AML compliance and reporting
24 under federal law has been delegated to these
25 agencies. In British Columbia, that
26 responsibility has fallen to BCLC.

27 But provinces also have legislation that
28 governs the regulation and oversight of gaming
29 and, in many cases, the provincial legislation
30 predated federal anti-money laundering
31 regulations. For example, gaming operators in
32 British Columbia are required to file a Section
33 86 report with GPEB when they suspect any illegal
34 activity, including money laundering. This is in
35 addition to reporting requirements to FINTRAC.

36 As cited in Dr. German's first report, the
37 transition to a risk-based or standards-based
38 approach would be supported by the gaming
39 industry. It is, and the model is seen in mature
40 gaming industries across the globe but also in
41 other industries. And we highlighted many of
42 that in our initial submission. Here in Canada,
43 we have a similar model in Ontario through the
44 Alcohol and Gaming Commission of Ontario.

45 CGA supports items like further examination
46 of the recommendation that Suspicious Transaction
47 Reports be completed by service providers and

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1 should be submitted directly to FINTRAC, while
2 these reports would also be shared with BCLC.

3 We understand there were similar
4 recommendations in the 2018 report of the Federal
5 Standing Committee on Finance in its review of
6 the *Proceeds of Crime Act*, titled *Confronting*
7 *Money Laundering and Terrorist Financing: Moving*
8 *Canada Forward*.

9 We would encourage policy makers to look at
10 these recommendations seriously and look at a
11 comprehensive approach to preventing money
12 laundering across the broader economy, regardless
13 of sector, and focus on compliance and reporting
14 obligations on certain at-risk activities and
15 transactions, versus trying to define specific
16 industries. For example, in the United States,
17 any trade or business that accepts \$10,000 or
18 more in cash from a customer must file a report
19 with the IRS and FinCEN. It's not designated to
20 a specific sector of the economy. We believe
21 this approach would allow for actually a more a
22 seamless approach to confronting AML.

23 So in summary, I want to reiterate the
24 Canadian gaming industry's commitment to playing
25 its part in the fight against money laundering
26 and financial crime. As I said earlier,
27 regulatory oversight is built into the DNA of our
28 industry and is top of mind to every operator,
29 every day.

30 The gaming industry will continue to be a
31 strong partner in Canada's AML regime because it
32 is strongest when we all work together.

33 I hope my comments have highlighted some areas to
34 focus on for the Commission and I would be happy
35 to take any questions. Thank you very much.

36 THE COMMISSIONER: Thank you.

37 MR. BURNS: Thank you.

38 THE COMMISSIONER: Yes, Mr. Martland.

39 MR. MARTLAND: Mr. Commissioner, just because our
40 record should reflect it, Mr. Burns, Paul Burns,
41 who just spoke is the President and CEO of the
42 Canadian Gaming Association.

43 THE COMMISSIONER: Yes.

44 MR. MARTLAND: He wasn't here yesterday and so wasn't
45 introduced on the record then, so I just thought

46 I would make sure his name is on our record.

47 THE COMMISSIONER: Thank you.

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The Society of Notaries Public of B.C.

1 MR. MARTLAND: We have Mr. Usher next for the Society
2 of Notaries Public.
3

4 OPENING STATEMENT BY MR. USHER AND MR. MAYR (SOCIETY
5 OF NOTARIES PUBLIC):
6

7 MR. USHER: Good morning, Mr. Commissioner.

8 THE COMMISSIONER: Yes, Mr. Usher.

9 MR. USHER: I'm here with John Mayr, our Executive
10 Director, so unless it presents some difficulty,
11 we'll do this together.

12 THE COMMISSIONER: All right. Thank you, Mr. Usher.

13 MR. USHER: Just a note. I've handed up a copy of our
14 written presentation. It's been given
15 electronically to your staff and I take it it
16 will be distributed to everyone later.

17 THE COMMISSIONER: Yes, I understand that's the case.
18 And I do have a copy. Thank you.

19 MR. MAYR: Thank you, Mr. Commissioner. The Society
20 of Notaries Public welcomes the opportunity to
21 make this presentation to the Cullen Commission.
22 We'd like to acknowledge that we're on the
23 unceded territory of the Coast Salish people.

24 We'd like to express our thanks and
25 gratitude to the you, the Commissioner, and the
26 Commission staff for the opportunity. It
27 certainly is an important inquiry that certainly
28 needs to be done.

29 MR. USHER: A few background notes might be in order
30 just through the uniqueness of the role of
31 notaries public in British Columbia. So it is
32 unique in fact that our members are legal service
33 providers with a scope of practice that includes
34 areas of non-contentious legal services,
35 particularly including real estate transactions.

36 So throughout this when we refer to notaries
37 public, we mean the members of the Society of
38 Notaries Public of British Columbia who hold a
39 Royal Commission granted by the Supreme Court of
40 British Columbia appointing them as a Notary. Of
41 course, all lawyers who are practising members of
42 the Law Society are by statute notaries public in
43 and for the Province of B.C., but of course we do
44 not regulate lawyer notaries.

45 There are also, I should point out, a very
46 small number of notaries directly appointed by
47 the Government, mostly in government service, but

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1 again, they are not regulated by us as well.
2 There's probably 20 or 30 of those.

3 So of course some history is in order. So
4 B.C. notaries are common law notaries, and
5 they've been in practice in British Columbia
6 since the earliest days of the colonies of
7 Vancouver Island and British Columbia. The work
8 they do, as you might expect, is similar to the
9 practice of notaries in England in the mid-1800s.
10 Of course Quebec has notaries and they are civil
11 law notaries. The common law notarial practice
12 split from the civil tradition in the 1500s.
13 That said, there are many similarities between
14 notaries around the world as they everywhere
15 focus on non-contentious legal matters. The text
16 of the current oath of office and commission in
17 B.C. is directly taken from the English *Public*
18 *Notaries Act* of 1843.

19 So every one of our members, when installed
20 in the professional before a Supreme Court Judge,
21 takes the following oath, and it has a bit of
22 interesting arcane language in it that needs some
23 explanation:
24

25 I do swear that I will not make or attest
26 any act, contract or instrument in which I
27 know there is violence or fraud, and in all
28 things I will act uprightly and justly in
29 the office of a Notary Public.
30

31 And of course the word "violence" here is a term
32 from the 1800s. At that time a meaning of it was
33 they would not -- a document altered without
34 authorization. So if you did violence to a
35 document, it meant you've made changes to it and
36 you introduced fraud in it.

37 So that's the oath to this day. It's right
38 from the *Notaries Act* and Regulation in our
39 modern statute.

40 And we should note that the very first
41 document filed in our Land Registry system, on
42 May 4th, 1861, was witnessed by a notary public.

43 MR. MAYR: The Society of Notaries Public was
44 established in 1926, and not unlike other
45 professional organizations back then, it was an
46 advocacy body which represented the profession as
47 opposed to the public. It was about in 1967 that

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1 the provincial Government delegated to the
2 Society the authority and responsibilities to
3 regulate the profession in the public interest.

4 Currently the Society is responsible for
5 setting and establishing standards of education,
6 ensuring that commissioned notaries are competent
7 to practise and protect the public in the
8 delivery of legal services. We also enquire into
9 matters of conduct and conduct discipline
10 proceedings, always with the public interest in
11 mind. We'd like to point out that currently
12 notaries public must receive a Master of Arts in
13 Applied Legal Studies or an equivalent level of
14 education to be commissioned in this province.

15 The Society of Notaries Public, like other
16 regulators in British Columbia, should be
17 considered as law enforcement agencies. We do
18 enforce the *Notaries Act*.

19 MR. USHER: So currently there are about -- well,
20 actually not about -- exactly 396 practising
21 notaries, our members, in the province. I should
22 point out that that's not quite double the number
23 of staff the Law Society has. So we're a fairly
24 small organization. But those members, in the
25 last 12 months, did 88,956 real estate
26 transactions involving trust funds, in the 12
27 months preceding February 15th, 2020. This
28 represents a significant percentage of the real
29 estate transfers and mortgages done in the
30 province. While there are no precise statistics,
31 notaries are also primary providers of personal
32 planning legal services, including wills,
33 representation agreements and powers of attorney.
34 Our notaries are generally storefront practices
35 that build long-term relationships with their
36 clients. The principles of "know your client"
37 are fundamental to those relationships and assist
38 in the understanding of the source of funds used
39 in transactions.

40 Our notaries are reporting entities under
41 the *Proceeds of Crime (Money Laundering) and*
42 *Terrorist Financing Act*, and they comply with the
43 provisions of that act. They are subject to
44 FINTRAC audits. And it should be noted that to
45 date no B.C. notary has been subject to a penalty
46 imposed under that act.

47 Our members are bound by the privacy

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1 provisions of the British Columbia *Personal*
2 *Information Protection Act* and other privacy
3 legislation. It is important to note that
4 solicitor-client privilege does not apply to
5 their client relationships. There is a court
6 decision giving that privilege to Quebec notaries
7 but it does not apply to B.C. notaries. Notaries
8 can and routinely do cooperate with police and
9 tax enforcement agencies as required by law. Of
10 course they're subject to compliance with our
11 act, our rules, bylaws, and our Society's
12 "Principles for ethical and professional conduct
13 guideline," similar to the rules that lawyers
14 must follow.

15 The practice of notaries necessarily
16 involves compliance with the administration of
17 federal and provincial statutes, the collection
18 and remittance of applicable taxes as well as
19 constant attention to the avoidance of money
20 laundering.

21 As a regulatory body, the Society and its
22 members recognize and understand the negative
23 effects of money laundering, and we generally in
24 our work have adopted the United Nations
25 definition of money laundering, which I think is
26 generally accepted.

27 MR. MAYR: There can be no doubt that there are
28 complex interactions between government policy
29 and legal services. Those include things like
30 housing affordability, allegations of money
31 laundering, the conversion of offshore capital,
32 and the public sentiment and trust in the
33 systems.

34 Concerns about affordability go back very
35 far in British Columbia, and the Commission faces
36 a daunting task in sorting out with some degree
37 of precision to which money laundering is a
38 significant factor, for example, in
39 affordability. The Society stands ready to
40 assist as we can in the task. But a serious
41 attempt needs to be made to see if it is possible
42 to do better than a guesstimate of the
43 inestimable.

44 There is a tension that exists between
45 measures related to taxation and transparency and
46 affordability and privacy. Despite the fact that
47 the vast majority of land in the province is

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1 owned by individuals, there is a concern that
2 beneficial ownership is hidden through
3 corporations and trusts. Our members will be on
4 the forefront and centre of the effective launch
5 and operation of the *Land Ownership and*
6 *Transparency Act*.

7 MR. USHER: We sit on various consultative committees
8 with our Land Title people and other agencies in
9 the development of this, and we're very
10 impressed. It looks like Land Title is just
11 ready to go with that fairly soon.

12 *LOTA* -- that's the *Land Ownership and*
13 *Transparency Act* -- will create a publicly
14 accessible registry of beneficial interests in
15 land that will include information on freehold
16 interests, life interests, leasehold leases with
17 a term of more than 10 years, contractual rights
18 to occupy land, et cetera. These obligations
19 arise in relation to interests that are
20 registered. So don't forget, *LOTA* is not going
21 to apply to unregistered interests in land, which
22 of course is very rare, because without that
23 registration, one does not get the benefits of
24 our amazing Torrens system.

25 Not surprisingly, though, it is anticipated
26 that reporting and maintenance of records related
27 this will increase the cost related to real
28 estate transactions by a significant amount.
29 Every single real estate transaction in future,
30 starting this year, will have a significant
31 amount more work, a significant amount of form-
32 filling. We're still just working with our
33 members trying to get a sense of how much this is
34 going to add to both fees and disbursements in
35 every transaction.

36 Now, it's intriguing to note, of course,
37 that information about shareholders used to be
38 publicly available. It was for many, many
39 decades. But access to that was removed through
40 an act of the Province, interestingly due to
41 concerns about the negative impact on foreign
42 investment and privacy. So concerns of these
43 rules -- for example, there was decades where we
44 had to collect citizenship declarations. That
45 came out of panic about European investment in
46 British Columbia in the '70s. Hundreds of
47 thousands of those forms were completed. I'm

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1 told no one ever looked at them until the day
2 they were trucked out of a warehouse in Burnaby
3 and burnt.

4 MR. MAYR: We'd next like to speak a little about real
5 estate and the role of legal professionals. The
6 involvement of notaries and lawyers in real
7 estate transactions has can be summarized quite
8 simply. It allows for strangers to exchange
9 money for real property in a safe, effective, and
10 efficient manner. How we carry out our real
11 estate transactions in B.C. is the envy of much
12 of the world and really speaks to the solid basis
13 of our Torrens system.

14 In essentially every instance, the funds for
15 real estate transactions that notaries receive
16 come directly from regulated Canadian financial
17 institutions. This is usually in the way of a
18 bank draft, a credit union official cheque, or a
19 direct deposit from one of these financial
20 institutions.

21 Our members, notaries, do do due diligence
22 on these deposits, including source of funds
23 determinations. By rules, our members cannot
24 accept certified cheques unless they personally
25 attend to the financial institution, and a member
26 may also deposit trust account cheques from
27 lawyers or real estate brokerages. Historically,
28 our system has been stable, safe, and trusted.
29 Issues with bad funds are very, very rare.

30 MR. USHER: Of course, there have been many reports
31 suggesting what are the indicators of money
32 laundering. But we feel it's important to say
33 that there are numerous and legitimate reasons
34 that a person may purchase property, for example,
35 and not require a mortgage. Money is not
36 necessarily being laundered when a student from a
37 well-off family purchases a home, even when the
38 value is extraordinary, so long as the funds are
39 not the result of "any act or attempted act to
40 disguise the source of money or assets derived
41 from criminal activity." We note, for example,
42 that the *Property Law Act* specifies that it is
43 illegal in British Columbia to discriminate in
44 terms of the purchase of real estate in regard to
45 national origin or citizenship. So that was
46 baked into our *Property Law Act* at the time of
47 the concerns in the '70s.

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1 So we urge the Commission to consult broadly
2 with experts. We need to put B.C. in a world
3 position. You know, we're not immune to
4 worldwide trends and economic factors. This is
5 often referred to as the financialization of real
6 estate. And as we look for explanations, we
7 can't look at British Columbia in some isolation.

8 But there are several other matters that we
9 think are important. Unfortunately, it appears
10 that current law enforcement and monitoring
11 systems may be fundamentally broken. Amongst
12 other factors, this is in part due to
13 underfunding and resourcing. We are very
14 sympathetic to the plight of the many dedicated
15 persons in our agencies charged with law
16 enforcement. They are entitled to resources
17 appropriate to our expectations of results.

18 There are lots of statistics on crime rates.
19 Money laundering convictions are rare. There are
20 very few prosecutions. What criminals, though,
21 take advantage of are siloes of information. We
22 are very pleased to be part of *Project Athena*,
23 which you heard about. It's a useful and
24 tangible attempt to break down unnecessary
25 barriers. Recently we hosted the project's real
26 estate subgroup in a very successful meeting just
27 a block away from here.

28 We are aware of a matter where FINTRAC
29 received suspicious transaction reports with
30 respect to one of our members. Neither the
31 reporting entity nor FINTRAC or any other agency
32 advised, notified or otherwise provided
33 information to the Society in regard to their
34 concerns. That information would have provided
35 the opportunity for the Society as a regulator to
36 conduct targeted audits and inspections.

37 MR. MAYR: The failure to share information, to inform
38 and advise any regulator, including the Society
39 of Notaries, simply deepened the fraud and caused
40 harm to members of the public.

41 The Society recommends that the Commission
42 examine and explore barriers to sharing
43 information. We would ask that you encourage
44 government to make clear provisions and statutes
45 that provide for sharing of information with
46 appropriate agencies, including regulators.

47 THE COMMISSIONER: I take it you're not looking for a

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1 regime that's similar to what BCLC does as the
2 reporting agency for the service providers.

3 MR. USHER: In terms that we would provide the --

4 THE COMMISSIONER: Yeah.

5 MR. USHER: No, no. I don't think so. And I think it
6 seems to work -- the reporting is at the right
7 level, I think.

8 THE COMMISSIONER: All right.

9 MR. USHER: What we're talking about here, though, is
10 how can we get in the loop. And for example, at
11 the *Project Athena* meeting, the police were --
12 there was a shared information about a matter
13 under way, and it took -- what was the time? --
14 14 months to get a response from FINTRAC by the
15 police.

16 MR. MAYR: Yeah. The police requested information
17 from FINTRAC and it was 11 months later that they
18 received the information. And in today's
19 society, the speed in which money moves, that was
20 probably transacted a hundred thousand times
21 before the RCMP received information about the
22 transaction.

23 MR. USHER: We need to find some way to make sure that
24 the filing, for example, of STRs -- suspicious
25 transaction reports -- can be more widely shared
26 in a timely way with people who have regulatory
27 authority. Nothing is more frustrating to a
28 regulator than to hear, years later, that people
29 were filing STRs and we knew nothing about it.

30 THE COMMISSIONER: Okay.

31 MR. MAYR: For clarity, we would propose that a scheme
32 for information sharing include agencies like
33 FINTRAC, Canada Revenue Agency, courts at all
34 levels, law enforcement agencies, taxation audit
35 programs, and of course professional regulators.

36 MR. USHER: Just to make it clear, in B.C. the
37 information held by our members is under this
38 *Personal Information Protection Act*, but s. 18 of
39 that gives the circumstances when it can be
40 shared. So for example -- and I set that out,
41 s. 18 -- and a good example is on an urgent basis
42 recently, we were able to respond and work with
43 the RCMP, who were dealing on a weekend with an
44 urgent situation in one of our member's offices.
45 I was able to attend and explain to them how
46 s. 18 worked and that that provision allowed them
47 that very sensitive -- time sensitive criminal

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1 investigation to proceed without delay. And as a
2 result, the RCMP were able to gather the
3 necessary evidence directly in the office of the
4 notary.

5 Current provincial law, of course, requires
6 disclosure of information regarding transactions.
7 However, we want to point out that some laws
8 require unrelated individuals -- by that I mean
9 strangers -- verifying information about other
10 people. We would suggest that the information
11 reporting systems could be strengthened by the
12 Commission making recommendations concerning the
13 collecting of information from appropriate
14 parties. By way of example, requiring the buyer
15 of a property to provide information about the
16 seller, and then to subject the buyer to fines
17 for the quality of that information of a seller
18 is nonsensical.

19 I think a key here is we want to consider
20 what improvements can be made to the collection
21 of critical tax and ownership information -- and
22 here's the key point we want to make -- so that
23 the right information is collected at the right
24 time, attested to by the right party. Notaries
25 are well positioned to be trusted collectors and
26 remitters of appropriate and necessary
27 transactional information from properly advised
28 clients.

29 MR. MAYR: With respect to the objects of the
30 Commission and your mandate, it deals with the
31 interaction between professional services, legal
32 and accounting, and money laundering. Members of
33 the Society are legal services providers who are
34 entitled to and provide legal services directly
35 to the public. They collect information and
36 maintain information directly from the public.
37 Courts have long held that the standards of
38 practice, standard of care, is no different for a
39 lawyer in this province than for a notary.

40 We'd like to note that there now exists
41 technology which would allow a regulator to
42 monitor and collect data from trust account
43 activity seamlessly and using technology. And
44 we'd like to see some of these very forward-
45 looking technological applications considered as
46 within the mandate of regulators.

47 MR. USHER: The Law Society in their presentation

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1 mentioned this, and this would require perhaps
2 some statutory authority to us to use these
3 technologies. And this would very much allow us
4 -- we of course audit trust accounts -- but if we
5 could have sort of a more real-time monitoring of
6 those, that would be much appreciated.

7 Of course, you're also charged with looking
8 at acts or omissions of regulatory authorities.
9 I can tell you we're not aware of any acts or
10 omissions or allegations that we have acted or
11 failed to act.

12 That said, though, we're a small
13 organization and there's always new things
14 happening. We are very committed to regularly
15 reviewing our operations to ensure that best
16 regulatory practices are being maintained and
17 improved in response to changing conditions.

18 The Society adopted and fully embraced the
19 FINTRAC regime, and that's something that frankly
20 has worked out fine. As a result, we provide
21 training and education to both our members but
22 also we've -- I personally on a number of
23 occasions have provided education to FINTRAC
24 auditors and assessors so they can fully
25 understand. So this has been a regular thing
26 we've done over the years, that they meet with
27 us, we meet with them, so they fully understand
28 what our members do.

29 Because it was a new thing. It was a new
30 thing for FINTRAC to deal with our members, who
31 we're mostly single practitioners. FINTRAC is
32 often working with the Royal Bank, for example.
33 So it was quite a different world for them to
34 understand how transactions work, and in
35 particular how transactions work in B.C. Real
36 estate practice is a provincial requirement in
37 Canada. And so just because it works some way in
38 Alberta, that's not how it works in British
39 Columbia. So we've really appreciated their
40 reaching out to us to make sure that their audits
41 make most sense in the light of how things are
42 actually done in British Columbia.

43 MR. MAYR: You are also charged with reviewing the
44 scope and effectiveness of the powers, duties and
45 functions carried out by regulatory authorities.
46 The government and the public would benefit from
47 strengthening the statutory framework for

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1 regulatory professionals, and we've seen some
2 action there with respect to real estate
3 professionals.

4 The *Notaries Act*, although it's functional,
5 is dated, and effective regulation requires
6 modernization and forward-looking statutory
7 provisions. Money laundering rarely looks
8 backwards.

9 With the existing framework, the Society is
10 an effective regulatory agency. We regulate our
11 members in the public interest and in the
12 interest of a civil society. That said, we look
13 forward to working with the Commission on a range
14 of possible enhancements to the regulatory regime
15 in the province.

16 MR. USHER: Of course there are barriers to law
17 enforcement. And of course a theme we've been
18 hearing about is how can we enhance our tools and
19 share information. I think that's really
20 critical. Our act is very inflexible in the
21 discipline we can impose. And again, we've long
22 sought improvements to the various manners in
23 which we can carry out our disciplinary
24 requirements. We need to look and recommend how
25 everybody involved in this ecosystem can share
26 information.

27 Some further suggestions. There is no doubt
28 that those involved in money laundering and
29 financial fraud take advantage of the speed at
30 which money now moves.

31 With respect to real estate transactions, we
32 propose that slowing down the transaction by
33 statutorily requiring a set period of time
34 between contract finalization and completion
35 would allow for legal professionals and other
36 reporting agencies to be able to fully carry out
37 appropriate due diligence, data collection, tax
38 clearances and data validation.

39 We need some high quality registries and
40 data validation tools that are available for our
41 members to access. This needs to be done
42 affordably, because of course the cost of all
43 these registries and searches -- for example *LOTA*
44 will be a new search that our members are going
45 to have to do. Of course, it ends up being a
46 consumer cost.

47 Of particular concern to us is that the

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1 Commission needs to take a careful look at
2 mortgage lending by unregulated and non-reporting
3 entities. Of particular interest there will be
4 the source of funds used for making those loans.

5 We've already had communications with the
6 B.C. government in regard to the remarkable
7 digital initiatives they're taking. In
8 particular, for example, some remarkable tools to
9 do digital identification, linking driver's
10 licence/B.C. card directly with government
11 databases to verify them. I've had the
12 experience in my office of giving evidence in
13 court based on the ID I took in a transaction.
14 I'm pleased to report that the fellow was
15 convicted. It was someone pretending to be a
16 seller. Unfortunately the bad guys got the
17 money. All collapsed based on disclosure laws.
18 But at least the guy I gave evidence about went
19 to jail. And that was based on the ID practices
20 I had in my law firm at the time.

21 The ubiquitous use of the digital exchange
22 of funds is inevitable. So we're going that way.
23 So it's very important that the systems be
24 designed to provide auditable, contextual data
25 that will allow for appropriate confirmation of
26 the source and reliability of funds, and for our
27 timely auditing. In that end we've been
28 attending Canadian Payments Association meetings,
29 and there are many really interesting
30 enhancements coming. The Canadian Payments --
31 what's now called Payments Canada is the
32 statutory regulator of the payment system in
33 Canada. They're doing some remarkable work in
34 the international context. Again, that's going
35 to allow for this contextual data to travel with
36 the funds. A difficulty of so many of our
37 current systems, all that travels is an account
38 number, an amount and a date, and it does not
39 provide contextual information for that. Again,
40 we support the work that the Canadian Payments
41 Association is doing in that regard, and I would
42 urge that someone -- obviously missing from this
43 room, in my view, are the financial institutions
44 and Payments Canada. So I urge you to take a
45 look at them.

46 On the not so simple end, an examination
47 needs to be made for reform to courts and

1 judicial systems. Obviously this is complex and
2 controversial, but effective prosecutions remain
3 the ultimate deterrence to crime. I ask -- and I
4 appreciate the controversy exists in the legal
5 world. I think it's timely to ask if the *R. v.*
6 *Stinchombe* disclosure requirements need to be
7 reconsidered. Are they really serving justice?

8 Obviously in all of this we've got to find a
9 balance between privacy and transparency. But we
10 cannot allow privacy to be a shield to obfuscate
11 source of funds, beneficial ownership, and money
12 laundering.

13 We've got to follow the money, and I would
14 just urge the Commission to make sure you've got
15 in the room the people who are tasked with both
16 guarding the money and creating systems that
17 follow money flow.

18 There's a law that is absolutely going to
19 play out here. It's the law of unintended
20 consequences. Many good ideas on first blush
21 have consequences that we really can't
22 anticipate. So I just urge the Commission --
23 you've got an excellent staff -- to explore with
24 a forward-looking perspective and diverse
25 consultations you make, the potential effects of
26 any recommendations you make.

27 So for example, what are the costs? What
28 are the time costs? What are the implications of
29 these things? So there are many ideas that have
30 been touted over the last few years about these
31 issues, rarely, though, with a fulsome look at
32 the consequences of those ideas.

33 MR. MAYR: In closing, the Society of Notaries Public
34 and counsel for the Society are available to
35 assist and inform the Commission concerning real
36 estate and land transactions in this province.
37 We encourage the Commission to maintain a
38 connection with the Society of Notaries Public, as
39 we are committed to supporting the Commission in
40 the daunting work of developing real world
41 solutions to money laundering concerns based on
42 methodical research and thoughtful policy
43 development.

44 Thank you.

45 THE COMMISSIONER: Thank you, Mr. Mayr and Mr. Usher.

1 OPENING STATEMENT BY MS. CAMLEY (BMW):

2
3 MS. CAMLEY: Mr. Commissioner, we are counsel for BMW
4 Canada and BMW Financial Services, a division of
5 BMW Canada Inc.

6 BMW Canada Inc. is a Canadian subsidiary of
7 BMW AG, a German multinational company that
8 manufactures and distributes luxury vehicles and
9 mobility services through its retail network.
10 BMW Financial Services provides financial
11 services, including leasing and financing of
12 vehicles to BMW customers in Canada.

13 As a globally recognized manufacturer and
14 marketer of motor vehicles, the BMW name and
15 brand is well known. BMW's vehicles are marketed
16 under the following brands: BMW, MINI, and
17 Rolls-Royce. BMW has a substantial presence in
18 Canada, with 51 BMW retailers, 30 MINI retailers,
19 four Rolls-Royce retailers, and 20 BMW Motorcycle
20 retailers nationally.

21 In British Columbia, BMW, MINI, and Rolls-
22 Royce vehicles are sold through authorized
23 retailers in Vancouver, North Vancouver,
24 Richmond, Langley, Victoria, Nanaimo, and
25 Kelowna.

26 Additionally, BMW vehicles are heavily
27 traded on the Canadian used car market both with
28 authorized and unauthorized dealers.

29 BMW is the only luxury vehicle manufacturer,
30 seller and financier who has applied for and been
31 granted standing as a participant in this
32 inquiry. BMW is privileged to be taking part in
33 this historic inquiry as a participant and to
34 have the opportunity to address the Commission
35 today.

36 BMW sought participation in this inquiry
37 because, as an industry leader, it believes it
38 can help the Commission fulfil its mandate to
39 make fair, accurate, and helpful findings and
40 recommendations for the benefit of the automotive
41 industry and British Columbia consumers. The
42 scope of the Commission's mandate is broad. It
43 has been called upon to make findings of fact and
44 recommendations respecting money laundering in
45 British Columbia.

46 As money laundering is insidious in nature,
47 it is important for those who may have on-the-

1 ground knowledge about its extent, growth,
2 evolution, and methods of money laundering to
3 share their experiences and insights with the
4 Commission.

5 We cannot forget that this inquiry was
6 established for the benefit of the British
7 Columbia public. Money laundering is a serious
8 problem in British Columbia. It will continue to
9 flourish if action is not taken. The people of
10 British Columbia are concerned. BMW is
11 concerned, as are its customers.

12 As Peter German writes:

13
14 All those attributes which make Greater
15 Vancouver a very desirable region in which
16 to live, also make it desirable to organized
17 crime. In recent years, the region has
18 acquired the unenviable reputation for
19 serving as a site for money laundering, drug
20 trafficking, and capital flight.

21
22 It is both an embarrassment and a threat to
23 society that adheres to the Rule of Law, for
24 organized crime to take advantage of all
25 that is good in our society and subvert it
26 for its pecuniary advantage.

27
28 BMW seeks to contribute to the Inquiry by
29 being open and transparent in its insights,
30 experiences, and industry leading practices.

31 Vancouver is known as the luxury car capital
32 of North America. As you will know, it is not
33 unusual to see many high end luxury vehicles on
34 the streets of Metro Vancouver at any time on any
35 given day of the week.

36 Not only is there a huge market for luxury
37 vehicles in British Columbia, there is a demand
38 for luxury housing for luxury vehicles. A
39 development called the Trove located in Richmond
40 is currently selling auto storage condominiums to
41 luxury car owners. Trove promises to "redefine
42 what it means to own a luxury vehicle in
43 Vancouver." The base price for one unit is
44 \$600,000 and its owners can choose to pay more to
45 customize their units.

46 Given the climate and appetite in British
47 Columbia for luxury vehicles and their high end

1 accessories, perhaps unsurprisingly, the terms of
2 reference direct the Commission to review Peter
3 German's second report, which deals with luxury
4 car vehicle sales. The second German report
5 engages in an extensive review of the luxury
6 vehicle market and its use in money laundering
7 and grey market schemes, and makes findings and
8 comments related to:

9
10 - The cash sales of luxury vehicles as a
11 means to launder proceeds of unlawful
12 activity;

13
14 - The use of straw buyers and nominees to
15 effect illegal export of luxury vehicles of
16 grey market schemes in China and elsewhere,
17 including tax refund schemes;

18
19 - The export of luxury vehicles for the
20 purposes of laundering money for criminal
21 organizations and terrorist organizations;
22 and

23
24 - Theft of luxury vehicles for money
25 laundering purposes.
26

27 As one of the world's leading luxury car
28 manufacturers, BMW has important information to
29 present to the Commission relating to the
30 unlawful export of BMW vehicles and the use of
31 straw buyers and nominees to conduct these
32 exports. Additionally, BMW will share with the
33 Commission the various efforts BMW already
34 undertakes to combat this issue.

35 BMW will provide the Commission with
36 recommendations which would ensure a balance
37 between the efficient growth in the luxury car
38 vehicle industry while building in safeguards to
39 combat money laundering.

40 So what is the vehicle grey market? The
41 Financial Action Task Force defines trade-based
42 money laundering as "the process of disguising
43 the proceeds of crime and moving value through
44 the use of trade transactions in an attempt to
45 legitimize their illegal origins or finance their
46 activities."

47 The Financial Action Task Force considers

1 trade-based money laundering as one of the
2 principle methods by which criminal organizations
3 and terrorist financiers move money for the
4 purpose of disguising its origin and integrating
5 it into the formal economy.

6 A grey market exists where a brand owner or
7 manufacturer's products are purchased and then
8 resold outside of an approved distribution
9 network. Money laundering through exporting
10 vehicles purchased for domestic use, known as the
11 vehicle grey market, is an example of trade-based
12 money laundering.

13 The grey market export scheme is further
14 described by Peter German in his Second Report at
15 page 196 as follows:

16
17 The grey market export of vehicles in B.C.
18 is a significant and rapidly growing
19 problem. There has been an explosion in the
20 number of grey market vehicles exported to
21 China since 2013 growing from less than 100
22 vehicles in 2013 to over 4,400 vehicles in
23 2018.

24 These vehicles are purchased for
25 domestic use by straw buyers --

26 THE COMMISSIONER: I'm sorry to interrupt you.

27 MS. CAMLEY: Yes?

28 THE COMMISSIONER: But is that all B.C. numbers.

29 MS. CAMLEY: As far as I understand, it is, but I can
30 confirm that.

31 THE COMMISSIONER: Okay. Thank you.

32 MS. CAMLEY: Yes. It's directly out Mr. German's
33 report.

34 THE COMMISSIONER: Okay.

35 MS. CAMLEY: These vehicles are purchased for domestic
36 use by straw buyers working for a fee or
37 commission on behalf of exporters, who then
38 rapidly ship the vehicles overseas where
39 international price differentials ensure
40 huge profits. B.C.'s unique geographic
41 location and ethnography make it an
42 incredibly attractive venue for this
43 activity.

44 A straw buyer is not the true purchaser
45 of an asset but represents that he or she
46 is. An exporter of luxury cars will employ
47 a network of family, friends, or sometimes

1 people recruited online or via word of
2 mouth. These straw buyers or agents will
3 sign the paperwork at dealerships, buy cars,
4 and then drop them off to be exported. In
5 return, they receive a small commission on
6 the vehicle, typically ranging from a few
7 thousand dollars and corresponding to less
8 than five percent of the vehicle's value.

9 Because these grey market vehicles are
10 being exported with appropriate taxes paid
11 and are not reported as stolen, [Canadian
12 Border Services Agency] [and police] neither
13 has the mandate nor the authority to detain
14 or seize the vehicles prior to export, even
15 if trade-based money laundering is
16 suspected.

17
18 So BMW is aware of and actually works to
19 combat the grey market in its vehicles. In

20 BMW --

21 THE COMMISSIONER: BMW has a pecuniary interest in
22 this, I take it. It undercuts their market in
23 the foreign countries? Is that the idea?

24 MS. CAMLEY: That's part of it, but it's also from a
25 corporate citizen perspective.

26 THE COMMISSIONER: Sorry, I missed that.

27 MS. CAMLEY: It's also from a corporate citizen
28 perspective --

29 THE COMMISSIONER: Right.

30 MS. CAMLEY: -- and a brand protection perspective.

31 THE COMMISSIONER: No, I understand that

32 MS. CAMLEY: Yes.

33 THE COMMISSIONER: But there is a market issue there
34 for BMW.

35 MS. CAMLEY: There is, yes. And we hope that when we
36 are at the point of providing evidence that we'll
37 be able --

38 THE COMMISSIONER: Yes.

39 MS. CAMLEY: -- to expand that particular issue.

40 THE COMMISSIONER: Sure.

41 MS. CAMLEY: So in BMW's experience, experience, the
42 unlawful export of its vehicles typically occurs
43 in the following manner:

44
45 - A straw buyer or nominee presents at a BMW
46 dealership seeking to purchase a vehicle;
47

1 - The straw buyer or nominee enters into an
2 agreement for the purchase of the vehicle,
3 pursuant to which a down payment is made,
4 followed by payment of the balance of the
5 purchase price, typically to be made in
6 instalments for a specified term.

7
8 This is either a loan or a lease.

9
10 - The straw buyer or nominee provides the
11 down payment to BMW, usually in the form of
12 a bank draft as opposed to cash;

13
14 - The straw buyer or nominee takes delivery
15 of the vehicle;

16
17 - Shortly after entering into the agreement
18 for the purchase of the vehicle, the straw
19 buyer or nominee contacts BMW to request a
20 quote on an early payout of the financed
21 purchase price of the vehicle;

22
23 - Soon after this, the straw buyer or
24 nominee provides a bank draft to BMW,
25 representing the balance of the purchase
26 price for the vehicle;

27
28 - The circumstances in which the bank draft
29 is sent to BMW are routinely suspicious,
30 leading BMW to suspect that the vehicle has
31 already been transferred to an unknown third
32 party, without BMW's consent in breach of
33 the lease or finance agreement. BMW
34 attempts to exercise its rights to
35 periodically determine the location of the
36 vehicle under the agreement, by:

37
38 Using either GPS tracking equipment to
39 determine the location of the vehicle.
40 However, through human intervention,
41 GPS tracking equipment can be rendered
42 unresponsive, resulting in a failure to
43 indicate the vehicle's location. The
44 failure of GPS tracking equipment, on
45 its own...is a rare [occasion].

46
47 And then the second opportunity is:

1
2 Demanding that the straw buyer or
3 nominee advise BMW of the vehicle's
4 location and to produce the vehicle for
5 inspection. Again typically, the straw
6 buyer or nominee reneges on producing
7 the vehicle, or fails or refuses to do
8 so.
9

10 - Then BMW cannot determine the location of
11 the vehicle.
12

13 - And then often the vehicle is not
14 recovered.
15

16 So why is this a problem for BMW? Customers
17 who purchase, lease, or finance certain BMW
18 models in Canada must sign a non-export
19 agreement. The export of these specific models
20 from Canada, within a certain timeframe after the
21 customer takes delivery of the vehicle,
22 constitutes a breach of the non-export agreement.
23

24 BMW has been and will continue to vigorously
25 enforce its non-export agreements through civil
26 litigation. As a good corporate citizen, it has
27 committed to combatting money laundering. It
28 upholds its commitment by seeking the assistance
29 of the civil courts when necessary.

30 Additionally, BMW is aware of global trends
31 and tactics in relation to money laundering. It
32 has first-hand knowledge that exporters seeking
33 to unlawfully export BMWs often set up schemes
34 which involve straw buyers or nominees, as
35 previously explained. Through these schemes,
36 illegitimate money may be converted into a
37 tangible asset, being a BMW vehicle, which is
38 then exported from Canada and sold at a great
39 profit to external markets.

40 Further, as Peter German describes in his
41 second report, the grey market for the export of
42 luxury vehicles takes advantage of the current
43 legislation to avoid paying provincial sales tax,
44 which is not payable if the vehicle is purchased
45 with the intent to resell.

46 As resellers are legally entitled to have
47 the provincial sales tax refunded, illegal export
 results in a significant burden on the Ministry

1 of Finance, as substantial time is required to
2 process tax return claims by civil servants.

3 Further, the Province of British Columbia
4 loses millions of dollars in lost provincial
5 sales tax revenue through wrongful refunds. On
6 luxury vehicles in British Columbia, the
7 provincial sales tax equals 10 percent of vehicle
8 prices between \$57,000 and \$125,000. It's 15
9 percent on vehicles between \$125,000 and
10 \$150,000, and it's 20 percent on vehicles
11 \$150,000 and more.

12 In this way, the vehicle grey market scheme
13 interfaces with the legitimate economy.

14 The Commission and the people of British
15 Columbia should be troubled by what is happening.
16 BMW is troubled. BMW wishes to assist the
17 Commission to make recommendations to curb the
18 proliferation of the vehicle grey market. It is
19 costing the Province significant money, while
20 illegal exporters are making great profits,
21 profits which may not be reported as income to
22 the Canadian Revenue Agency and are therefore not
23 taxed.

24 So what is BMW doing to combat illegal
25 exports? BMW is regarded as a leader in the
26 automotive community in its commitment to
27 combatting the unlawful export of vehicles from
28 Canada. That's why it asked to participate in
29 the Inquiry.

30 The mechanisms that BMW employs to combat
31 unlawful export include:

32
33 - The implementation of an export prevention
34 policy applicable to BMW retailers across
35 Canada, which mandates the use of a know
36 your customer process and a red flag
37 checklist to determine whether a sale,
38 lease, or finance of a BMW vehicle should be
39 completed;

40
41 - The continued education of BMW retailers;

42
43 - The auditing of BMW retailers;

44
45 - The use of non-export agreements; and

46
47 - The enforcement of non-export agreements

1 through civil litigation.

2
3 In terms of internal policies, BMW has
4 implemented certain internal policies applicable
5 to all BMW retailers across Canada designed to
6 curb unauthorized reselling and unlawful exports
7 of vehicles. These policies set out a series of
8 mandatory steps its retailers are obliged to
9 follow when selling, leasing, or financing
10 certain BMW models.

11 As an industry leader, BMW revisits and
12 amends these policies on a regular basis, to
13 ensure that its practices effectively address the
14 changing methods by which money laundering occurs
15 in the luxury vehicle market. As part of this
16 process, BMW conducts meetings with its retailers
17 to ensure the lessons learned from the retail
18 networks are meaningfully incorporated into its
19 policies and procedures.

20 As mentioned, one of the mechanisms through
21 which BMW attempts to curb unlawful exports is
22 through the implementation of a mandatory know
23 your customer process. This process applies to
24 all BMW retailers nationally and must be carried
25 out each and every time a BMW vehicle is sold,
26 leased, or financed in Canada.

27 In certain circumstances, retailers are
28 encouraged to carry out an enhanced measure on
29 top of the mandatory know your customer
30 processes, such as when a customer resides a
31 great distance from the retailer or is new to
32 BMW. In these circumstances, retailers must
33 request additional financial or employment
34 information from those customers to ensure
35 sufficient credit-worthiness and to minimize the
36 risk that the vehicle is not being purchased with
37 illegitimate funds.

38 Additionally, BMW retailers are required to
39 use a red flag checklist in determining whether
40 or not to complete a sale, lease, or finance of a
41 BMW vehicle. This checklist asks the retailer to
42 take into account a number of considerations
43 about the customer, including:

44
45 - Whether the retailer that the customer is
46 attending is the closest retailer to the
47 customer's home or place of business;

1
2 - Whether the customer is attempting to
3 purchase multiple vehicles; and

4
5 - Whether the customer is attempting to
6 conduct the sale transaction over the phone
7 or via email.

8
9 This checklist also asks retailers to
10 consider how the vehicle is being financed.
11 There is a note warning that such schemes may
12 involve financed or leased vehicles, with large
13 cash down payments and minimal financing.

14 Another mechanism that BMW employs to curb
15 money laundering is through the continued
16 education of BMW retailers. For example, BMW
17 leadership has clarified with its national
18 retailer network that the practice of placing
19 personal property liens on vehicles will not
20 provide the retailer any additional protection to
21 prevent the unlawful export of vehicles as such
22 liens can be paid out by customers immediately.

23 By participating in the flow of information
24 within BMW's retail network, BMW ensures that its
25 authorized retailers maintain an accurate
26 understanding of how unlawful export activity may
27 be curbed effectively.

28 In addition, BMW conducts export compliance
29 prevention audits of its retailers to ensure
30 compliance with the non-export policies. At
31 minimum, BMW conducts audits of retailers whose
32 reseller/export index is greater than three
33 percent of the total retail volume per calendar
34 year.

35 In summary, BMW has established certain
36 mandatory internal policies that bind all of its
37 retailers across Canada, including the obligation
38 to carry out the know your customer process, the
39 use of the red flags checklist each time a BMW is
40 sold, leased or financed, and through the use of
41 non-export agreements. Further, BMW conducts
42 export compliance prevention audits of its
43 retailers. As an industry leader, BMW's approach
44 to combatting the unlawful exports of vehicles
45 and money laundering is comprehensive, and
46 employing the use of various safeguards.

47 So an example with respect to the use of

1 non-export agreements, as previously set out,
2 customers intending to purchase, lease, or
3 finance certain BMWs in Canada must sign a non-
4 export agreement as part of the transaction.
5 Currently, this policy applies to BMW X5 and X7
6 vehicles sold, leased, or financed in Canada.
7 The X5 and X7 models are luxury sport utility
8 models. These vehicles are particularly
9 desirable for exporters as they may be sold
10 abroad for large profits and are seen as a status
11 symbol due to their exclusive nature.

12 The material terms of the current version of
13 the non-export agreements include, first, that
14 the client must not export the vehicle or permit
15 the vehicle to be exported from Canada without
16 written consent of BMW within 12 months of
17 receipt of the vehicle; or enter into or
18 acquiesce to any agreement whereby the vehicle is
19 leased or sold outside of Canada.

20 Additionally, under the current version of
21 the non-export agreement, BMW has the right to
22 periodically determine the location of the
23 vehicle for the 12 months following a customer's
24 receipt of the vehicle, or for the entire
25 duration of the lease or financing of the vehicle
26 through BMW Canada. It may do so by accessing
27 the vehicle's GPS and/or using other technology
28 to confirm the vehicle's location in Canada, as
29 well as an automatic alert system when the
30 vehicle enters into a high-risk zone associated
31 with export activities, such as borders or ports.

32 Enforcement is a necessary part of BMW's
33 multi-pronged approach to actively combatting
34 money laundering. On May 9, 2019, alone, BMW
35 commenced four actions in the British Columbia
36 Supreme Court against individuals located in
37 Coquitlam, Richmond, Surrey, and Burnaby, in
38 breach of contract, conversion, and wrongful
39 detention of BMW property. This series of
40 litigation was reported in the media, including
41 by CBC News.

42 In one such action, the defendant entered
43 into an agreement to finance a BMW X5 vehicle
44 with a purchase price of \$94,206.54. A down
45 payment in the amount of \$24,955.74 was provided
46 to BMW by the defendant. The balance of the
47 purchase price was to be paid over 60 months.

1 Approximately 10 months into the term, the
2 defendant mailed a bank draft to BMW for the sum
3 of \$59,600.68, representing the balance of the
4 purchase price at that time. The bank draft was
5 provided to BMW under suspicious circumstances,
6 including that:

7
8 - First, it was sent in the same Canada
9 Express Post envelope as another early
10 payout draft for a separate BMW purchased by
11 a different individual;

12
13 - Both bank drafts were from the same TD
14 Bank account;

15
16 - Both bank drafts were issued the same day;
17 and

18
19 - Both bank drafts appear to have been
20 signed by the same individual, whose name
21 was not decipherable from the signature.

22
23 Similarly, each of the defendants in the
24 other three actions commenced by BMW on May 9,
25 2019, also made large payments representing the
26 balance of the purchase price of the vehicle by
27 way of bank draft early on in the financing term.

28 In BMW's experience, the use of bank drafts
29 to pay off manufacturer loans is commonly used in
30 schemes to unlawfully export luxury vehicles.

31 Although the actions we described are still
32 ongoing, BMW advises the Commission and the
33 people of British Columbia that through the civil
34 litigation process, it has successfully recovered
35 vehicles destined for export in multiple cases.

36 As part of their recommendations to the
37 Commission, BMW supports the imposition of a
38 regulatory requirement prohibiting cash
39 transactions for vehicles in amounts above
40 \$10,000.

41 BMW further supports the prohibition of the
42 use of cash and cash-like instruments to pay off
43 manufacturer loans, except where the instrument
44 has sufficient information on it to link it to a
45 specific account at an existing reporting entity,
46 such as a financial institution.

47 Completely barring the use of bank drafts

1 would be unduly restrictive and impractical for
2 BMW and its customers. For example, if a nominee
3 purchased a luxury vehicle on a financing plan
4 and then sought to pay off the balance, the
5 province could require the funds to be sourced
6 from a financial institution that is a reporting
7 entity. This would make the funds traceable and
8 dramatically improve transparency, without
9 relying entirely on the industry's own methods to
10 combat these practices. This approach is highly
11 efficient and significantly mitigates the need to
12 expand the list of reporting entities under the
13 federal regime.

14 Ports play a big role in money laundering.
15 And in addition to adhering to the internal
16 policies that curb the unlawful export of
17 vehicles and by enforcing non-export agreements
18 through the civil litigation process, BMW works
19 closely with Canada Border Services and police
20 services whenever possible to prevent export of
21 vehicles through location and recovery. BMW
22 seeks civil remedies to seize vehicles found in
23 circumstances, including vehicles financed and
24 leased by BMW.

25 Sometimes these vehicles are driven from a
26 BMW retailer's lot directly to the port for
27 export. For example, in one instance, a BMW
28 found at the port had only 10 kilometres of
29 mileage.

30 When BMW vehicles are found for export, CBSA
31 may contact BMW to determine if it has an
32 interest in the vehicle. However, Canadian
33 ports, including Vancouver, Surrey, and Prince
34 Rupert, do not have a dedicated police presence,
35 and therefore resulting in a gap in law
36 enforcement. This makes it more difficult for
37 BMW to identify and to recover vehicles destined
38 for unlawful export.

39 If BMW has an interest in a vehicle, it must
40 make arrangements to recover the vehicle. CBSA
41 has limited authority to assist BMW in recovering
42 the vehicle, which is not considered stolen by
43 police services, as enforcement of non-export
44 agreements is considered a civil and not a
45 criminal matter.

46 Practically, BMW will be advised as to the
47 location of the vehicle, whether it is situated

1 inside a container at the port or has been
2 brought to a nearby towing yard, so BMW can
3 arrange to pick up the vehicle.

4 In BMW's experience, enforcement and
5 transparency at ports should be dramatically
6 improved. BMW is appreciative of the
7 collaborative efforts of CBSA and local police.
8 However, the volume of exports from Canada's
9 ports exceeds the ability of any one regulatory
10 body to police those exports.

11 Accordingly, BMW seeks the work of the
12 Commission to develop recommendations in relation
13 to increasing assistance and enforcement at
14 Canadian ports.

15 Specifically, BMW asks the Commission to
16 consider recommending that the provincial and
17 federal governments regulate the export of
18 vehicles from British Columbia and Canada.

19 This regulatory regime could impose
20 transparency and reporting requirements on the
21 exporters. In whatever form it takes, it should
22 be enhanced regulatory requirements imposed on
23 exporters that increase the difficulty of
24 exporting vehicles unlawfully.

25 Currently, the industry, BMW, and its
26 retailer network must dedicate its own resources
27 to this problem without being able to rely on any
28 regulatory framework or enforcement agency
29 dedicated to preventing unlawful exports.
30 Industry efforts on this issue alone can never be
31 sufficient or comprehensive enough to provide
32 maximum deterrence. BMW cares, but BMW needs
33 help.

34 So in conclusion, money launderers will
35 continually reform their methodologies to evade
36 regulation. Any new provincial regimes or
37 expansion of the federal regime should carefully
38 consider whether the new anti-money laundering
39 requirements properly balance the additional
40 compliance the additional compliance costs and
41 complexities imposed on industry against the
42 ability of money launderers to evade any new
43 requirements.

44 As the Inquiry progresses, BMW urges the
45 Commission to remember that industry --
46 especially the automobile retail sector -- is not
47 a regulator or a police service. It should not

1 be expected to investigate the possibility of
2 crimes or itself attempt to search through the
3 chain of nominees or beneficial owners, which are
4 often hidden.

5 An effective regime would ensure that any
6 form of reporting and compliance is easy to
7 implement at the level of the immediate
8 transaction. It would also ensure that industry
9 can benefit from and rely on pre-established
10 registries. For example, a new regime could
11 include a reasonable know your client requirement
12 for certain kinds of purchases but also permit
13 industry entities to rely on a corporate
14 beneficial ownership registry established,
15 maintained, and enforced by government.

16 In summary, BMW has sought participation in
17 this inquiry because, as an industry leader, it
18 believes it can assist the Commission in
19 fulfilling its mandate in making findings of fact
20 and recommendations with respect to money
21 laundering in the luxury goods and financial
22 services sectors. It is the only luxury vehicle
23 manufacturer, distributor, and financial services
24 provider who has applied for and been granted
25 standing to participate in this inquiry.

26 Through the course of the Inquiry, BMW will
27 engage in an open and transparent dialogue with
28 the Commission and, in doing so, BMW is hopeful
29 that Commission's work will yield practical
30 recommendations to curb and restrain money
31 laundering in the province of British Columbia.

32 THE COMMISSIONER: Thank you.

33 MS. CAMLEY: Thank you.

34 MR. MARTLAND: Mr. Commissioner, I'm just alerting you
35 that we're going to proceed a little out of the
36 sequence because we have two participants who
37 need to present tomorrow morning as opposed to
38 today --

39 THE COMMISSIONER: Yes.

40 MR. MARTLAND: -- due to availability. And so next
41 we'll hear from the B.C. Civil Liberties
42 Association. Then in the afternoon session we'll
43 hear from the Canadian Bar Association and
44 Criminal Defence Advocacy Society. And just for
45 everyone's benefit, tomorrow we'll hear from the
46 Transparency International Coalition as well as
47 B.C. Real Estate Association.

Opening Statement by Ms. Tweedie
B.C. Civil Liberties Association

1 THE COMMISSIONER: All right. Thank you. Yes, Ms.
2 Tweedie.

3
4 OPENING STATEMENT BY MS. TWEEDIE (B.C. CIVIL LIBERTIES
5 ASSOCIATION):
6

7 MS. TWEEDIE: Thank you. The British Columbia Civil
8 Liberties Association, or the BCCLA, wishes to
9 thank the Commissioner and Commission staff for
10 the opportunity to make this submission on the
11 unceded territory of the Musqueam, Squamish and
12 Tsleil-Waututh nations.

13 The BCCLA is a non-profit, non-partisan,
14 unaffiliated advocacy group, incorporated in B.C.
15 in 1963 pursuant to the B.C. *Societies Act*. The
16 objects of the BCCLA include the promotion,
17 defence, sustainment and extension of civil
18 liberties and human rights throughout B.C. and
19 Canada. As one of Canada's oldest and most
20 active civil liberties organizations, the BCCLA
21 works in furtherance of its objectives through
22 public education, position papers, and legal
23 action, including launching complaints with the
24 government and other administrative agencies,
25 appearing in court as a plaintiff or applicant,
26 and intervening in legal matters that raise civil
27 liberties issues.

28 The BCCLA has a long-standing, genuine, and
29 continuing concern for the rights of the citizens
30 in B.C. and Canada to liberty, democracy and
31 freedom. The BCCLA has expertise in a myriad of
32 civil liberties matters including criminal law
33 reform, police accountability, access to justice,
34 due process and the impact of investigative and
35 enforcement mechanisms on privacy, all of which
36 intersect with the subject matter of this
37 inquiry. The BCCLA will bring this expertise to
38 its role as a participant to provide a much
39 needed civil liberties-based perspective to the
40 issues that arise when investigating and
41 addressing money laundering in this province. In
42 particular, the BCCLA will address the proper
43 balancing of rights and freedoms in the context
44 of governmental and private sector efforts to
45 combat money laundering. This perspective is
46 crucial, and the BCCLA intends to be a voice for
47 the citizens of the province who cannot speak for

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1 themselves at this inquiry.

2 The BCCLA supports efforts to combat money
3 laundering in B.C., and recognizes that, if left
4 unchecked, money laundering has significant
5 social and political consequences. However, the
6 recommendations proposed to date call for
7 significant expansions of police and regulatory
8 powers and the over-collection of private
9 information, without evidence demonstrating that
10 these changes would be effective in combatting
11 money laundering. The risk to British Columbians
12 is profound. Time and time again, we have seen
13 that unfettered police powers lead to abuse. For
14 example, without proper checks and balances,
15 flawed laws empower governments and police forces
16 to use civil forfeiture to benefit their bottom
17 lines rather than to combat crime. Massive data
18 collection, retention and information sharing
19 programs place Canadians' private information at
20 risk. Programs that track and collect more and
21 more sensitive information can also be weaponized
22 to unlawfully monitor immigrants, activists, and
23 entire neighbourhoods. In considering effective
24 strategies for combatting money laundering, the
25 implications for the rights and liberties of
26 Canadians must form a part of the analysis.

27 Within the Commission's mandate is the
28 review and consideration of four reports dealing
29 with money laundering commissioned by the
30 Provincial Government. These reports contain
31 several recommendations for an anti-money
32 laundering, or AML, regime.

33 In reviewing the numerous recommendations
34 found in the provincial reports, certain common
35 threads emerge that have potentially grave
36 implications for the privacy rights and civil
37 liberties of Canadians. Broadly speaking, these
38 threads are:

39
40 - First, recommendations to increase the
41 amount and types of data collected by public
42 and private sector institutions, and to
43 increase the sharing of personal and
44 confidential data amongst public and private
45 institutions;

46
47 - Second, recommendations to increase the

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1 presence and powers of police and regulatory
2 investigators within the gaming industry;

3
4 - And third, recommendations for invasive
5 remedies such as civil forfeiture and the
6 potential introduction of unexplained wealth
7 orders.

8
9 In the submissions that follow, the BCCLA
10 has highlighted some of the implications for the
11 privacy rights and civil liberties of Canadians
12 that arise from these types of recommendations.
13 These submissions are not exhaustive. And the
14 BCCLA submits that AML measures should not be
15 recommended or implemented without serious
16 consideration of, and independent research into,
17 the efficacy of such measures and their potential
18 harms. Furthermore, the BCCLA submits that there
19 must be checks and balances in place for all
20 measures that are recommended to ensure that they
21 operate in a manner that does not unduly infringe
22 on the rights and liberties of Canadians.

23 The BCCLA wishes to ensure that federal and
24 provincial reporting requirements related to
25 money laundering do not result in the over-
26 collection and retention of highly confidential
27 personal information by multiple agencies in a
28 manner that is not sufficiently protective of the
29 right to privacy. The BCCLA is critical of
30 expanding the government and other agencies'
31 ability to collect and retain sensitive
32 information without a warrant or due process.

33 In 2015, the BCCLA made submissions to the
34 federal Standing Committee on Finance regarding
35 FINTRAC and the issue of terrorist financing in
36 Canada and abroad. The BCCLA spoke about the
37 troubling over-collection and retention of
38 personal information that was consistently found
39 in audits of FINTRAC by the Office of the Privacy
40 Commissioner of Canada. The BCCLA advocated for
41 a review of FINTRAC's efficacy in combatting
42 money laundering and terrorist financing, and we
43 hold these same concerns today.

44 The BCCLA opposes expanding the number of
45 entities that are required to report to FINTRAC
46 and increasing the scope of information that
47 FINTRAC is able to collect. Adding more

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1 reporting entities will inevitably capture a
2 greater number of innocent transactions and the
3 personal information of innocent individuals. If
4 more entities are required to act as de facto
5 agents of the state, collecting information
6 solely for the purpose of reporting it, the
7 government will acquire vast amounts of personal
8 information for investigatory purposes without
9 having ever shown reasonable grounds for
10 obtaining this information. These
11 recommendations pose a significant threat to the
12 privacy rights of Canadians. Further, the BCCLA
13 is concerned that the recommendation to have
14 FINTRAC flag transactions with a foreign
15 component could lead to profiling and
16 discrimination.

17 The BCCLA is also concerned with the
18 recommendations aimed at expanding FINTRAC's
19 powers to disclose data to other agencies. The
20 sharing of data, including proprietary
21 confidential data, creates a serious risk that
22 the confidential, personal information of
23 Canadians will be compromised when their
24 information is shared.

25 Similar concerns arise with the
26 recommendation to create a Transaction Analysis
27 Team to review all Suspicious Transaction Reports
28 (STRs), leading to the sharing of sensitive
29 information amongst numerous entities, including
30 GPEB, a possible designated policing unit, JIGIT
31 and BCLC.

32 The BCCLA submits that these types of
33 recommendations fail to consider the serious
34 privacy implications of mass data sharing between
35 agencies and fails to provide appropriate
36 measures to safeguard the personal information of
37 Canadians. The BCCLA is further concerned that
38 no credible, verifiable evidence has yet been
39 produced which suggests that a data-sharing
40 framework would be effective in combatting money
41 laundering.

42 Canadians have the right to know how and why
43 their personal information is being used by an
44 organization or a public body. Organizations and
45 public bodies that collect personal information
46 must secure it against unauthorized access, and
47 releasing or sharing personal information is only

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1 permitted in very particular circumstances and
2 with required lawful authority. These basic
3 privacy rights of Canadians must be respected and
4 upheld when considering measures for an AML
5 regime.

6 The BCCLA is also concerned with the
7 recommendations in the provincial reports
8 advocating for increased police presence and
9 powers. The BCCLA submits that it is critical to
10 ensure that policing units, including the
11 proposed Designated Policing Unit, or DPU, to
12 police casinos and related gaming activity, are
13 not created or expanded unnecessarily, and that
14 they do not operate in a rights-infringing
15 manner.

16 If the creation of a DPU is to be
17 considered, further independent research should
18 be conducted to provide a better picture of its
19 potential role and impact. The scope of such
20 research should include:

21
22 - independent research on the efficacy and
23 the potential impact on affected communities
24 of a DPU;

25
26 - independent research on the overlap and
27 potentially duplicative nature of the DPU's
28 work and the work of other entities, such as
29 JIGIT and local law enforcement; and

30
31 - consultation with the Information and
32 Privacy Commissioner to create a policy on
33 data collection, protection, and retention.
34

35 With respect to JIGIT, the BCCLA advocates
36 for a comprehensive and independent review to
37 ensure it is operating properly, successfully and
38 legally prior to considering whether it should be
39 provided with continued support and funding. Any
40 such review should fully consider whether JIGIT
41 is fulfilling a genuine need and whether this
42 unit is the most effective, accountable and
43 rights-protective means of addressing that need.
44 In that regard, the BCCLA has several concerns
45 regarding JIGIT's operations. Chief amongst
46 these concerns is JIGIT's use of both law
47 enforcement personnel and regulatory

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1 investigators to fulfill its mandate. The BCCLA
2 is concerned that the potential for blurring the
3 distinct roles and responsibilities of police and
4 regulatory investigators may result in the
5 infringement of civil rights for members of the
6 public who are subject to JIGIT investigations,
7 as well as potential failures of oversight and
8 accountability.

9 The BCCLA supports the recommendation for a
10 new independent regulator with clearly defined
11 roles and responsibilities that are fully
12 transparent to the public and is supportive of
13 the creation of the regulator as an independent
14 government agency. The BCCLA is opposed to
15 regulatory investigators being designated as
16 Special Provincial Constables without adequate
17 consideration for the risk to individual civil
18 liberties and the rights of the public who are
19 subject to an investigation.

20 The BCCLA has long been an opponent of civil
21 asset forfeiture laws, pursuant to which an
22 individual who has not been charged or convicted
23 of a crime can lose their property to the
24 government. The BCCLA has spoken out against the
25 incentives the legislation creates for government
26 abuse and the barriers that ordinary people face
27 representing themselves in civil forfeiture
28 cases.

29 The BCCLA further submits that the proposed
30 introduction of unexplained wealth orders, or
31 UWOs, in Canada is also deeply concerning. The
32 implementation of UWOs would be fraught with
33 serious civil liberties implications, including
34 an erosion of privacy rights, doing away with the
35 presumption of innocence, and subverting the
36 rights that shield Canadians from unreasonable
37 search and seizure.

38 The BCCLA is staunchly against the reverse-
39 onus scheme under which UWOs operate, which would
40 permit the Province to exercise coercive state
41 powers and obtain court orders against people
42 without evidence of wrongdoing. In addition to
43 these implications, the BCCLA submits that there
44 is no sufficient evidence on the efficacy of UWOs
45 to support their introduction. The BCCLA urges
46 the Commission to give due consideration to the
47 grave effects that measures such as UWOs would

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1 have on individuals and society.

2 To conclude, the BCCLA recognizes that the
3 possible social and political costs of money
4 laundering, if left unchecked or dealt with
5 ineffectively, are serious. And the BCCLA
6 supports this Commission's mandate and efforts to
7 address money laundering. However, developing an
8 effective AML regime cannot simply reflect calls
9 for more invasive powers, broader disclosures of
10 sensitive, highly prejudicial information, and
11 more resources for policing and FINTRAC. The
12 implications for the rights and liberties of
13 Canadians must form a part of the analysis.

14 THE COMMISSIONER: Thank you, Ms. Tweedie.

15 MS. TWEEDIE: Thank you. Yes, Mr. Martland.

16 MR. MARTLAND: Mr. Commissioner, I've just been
17 looking over our planned schedule, and it occurs
18 to me that the CBA and CDAS aren't here right
19 now. We were advised that they would be here for
20 this afternoon.

21 THE COMMISSIONER: Right.

22 MR. MARTLAND: I thought I would canvass with you
23 whether it made some sense, indeed for everyone,
24 rather than us returning at 1:30 for one
25 participant to address you and then returning
26 again tomorrow to have two more do so, whether
27 there might be some logic in having CBA and CDAS
28 return tomorrow along with the other two, so we'd
29 simply adjourn for today, return tomorrow
30 morning, complete the remaining presentations.

31 THE COMMISSIONERS: We've got Gateway at 1:30, is that
32 right?

33 MR. MARTLAND: I believe we've covered Gateway with
34 Mr. Gruber attending at the start of today, so
35 that was one of the --

36 THE COMMISSIONER: Of course. No, I'm sorry. I had
37 that noted --

38 MR. MARTLAND: I think that's hopefully caught up.

39 THE COMMISSIONER: -- but I didn't scratch it out.

40 MR. MARTLAND: Right.

41 THE COMMISSIONER: Thank you. Yes, that might make
42 sense.

43 MR. MARTLAND: I think it does. So on that note, if
44 we might then adjourn until tomorrow morning,
45 9:30?

46 THE COMMISSIONER: All right. Thank you.

47 MR. MARTLAND: Thank you.

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1 THE REGISTRAR: Order. The hearing is now adjourned
2 until 9:30 a.m. tomorrow morning.
3

4 (PROCEEDINGS ADJOURNED TO FEBRUARY 26, 2020,
5 AT 9:30 A.M.)
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