

**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.

Wednesday, February 26, 2020

APPEARANCES

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Chantelle Rajotte	B.C. (Ministry of Finance and GPEB)
Katherine Shelley	Canada
Ludmila Herbst, QC	Law Society of B.C.
Matthew Palmer	BCLC
Melanie Harmer	Great Canadian Gaming Corporation
Maya Ollek	James Lightbody
Ron Usher	Society of Notaries Public of B.C.
Carina Chiu	BMW
James Cohen	TI Coalition
Chris Weafer	B.C. Real Estate Association
Megan Tweedie Emily Lapper	BCCLA
Jo-Anne Stark Kevin Westell	CBABC/CDAS

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1
Opening Statement by Mr. Cohen
TI Coalition

Vancouver, B.C.
February 26, 2020

1
2
3
4 THE REGISTRAR: All rise. The hearing has now
5 resumed.

6 THE COMMISSIONER: Yes, Mr. Martland.

7 MR. MARTLAND: Thank you. Mr. Commissioner, Mr. Cohen
8 from the Transparency International Canada
9 Coalition is attending by video from Toronto.
10 We've been able to arrange that for his opening
11 comments. So we're going to have him proceed
12 first, and my note of the batting order is that
13 then the B.C. Real Estate Association and then
14 Canadian Bar Association and Criminal Defence
15 Advocacy Society to round out our opening
16 statements. Thank you.

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

19
20 (VIDEOCONFERENCE COMMENCES)

21
22 OPENING STATEMENT BY MR. COHEN (TI COALITION):

23
24 MR. COHEN: Thank you, Commissioner. And thank you
25 for accommodating [indiscernible - intermittent
26 signal] today on live webcast of our testimony
27 for the Coalition.

28 The [indiscernible] Coalition, made up of
29 Canadians for Tax Fairness [indiscernible]. The
30 Coalition is dedicated to reducing money
31 laundering across Canada.

32 The Coalition applauds the British Columbia
33 government on setting up the Commission to
34 establish accountability into causes of money
35 laundering in British Columbia, as well as hear
36 and recommend methods that the B.C. Government
37 can use to continue to address money laundering.

38 The Coalition is pleased to not only provide
39 testimony, but also identify experts that the
40 Commission may reach out to at its own discretion
41 for further advice on anti-money laundering
42 initiatives.

43 In our opening statement, I will review who
44 makes up the Coalition, a review of money
45 laundering, or "snow washing," in Canada, the
46 damage caused to Canada by the abuse of anonymous
47 companies, what Canada has been doing to address

2
Opening Statement by Mr. Cohen
TI Coalition

1 the problem of anonymous companies, and what our
2 Coalition recommends should be done, namely the
3 establishment of a publicly accessible registry
4 of corporate beneficial ownership.

5 The Coalition came together in 2016
6 recognizing a need for Canada to address opacity
7 of beneficial owners of companies. The aim was
8 focused on [indiscernible] owners in line with
9 increasing precedents being set internationally,
10 including the UK public registry that was
11 announced in 2016. The Coalition's work has been
12 funded by the Open Society Foundation since 2017.
13 The informal name of the Coalition, the "End Snow
14 Washing" Coalition, derives from a phrase to
15 describe money laundering in Canada, uncovered by
16 journalists reviewing the Panama Papers leak,
17 which I will describe further on.

18 I will provide a brief summary of each
19 organization in the Coalition.

20 Canadians for Tax Fairness is a non-profit
21 organization whose aim is to raise public
22 awareness of crucial issues of tax justice and to
23 change the way Canadians talk about tax. It
24 advocates for fair and progressive government
25 policies aimed at building a strong and
26 sustainable economy, reducing inequalities and
27 funding quality public services.

28 Publish What You Pay Canada is part of the
29 global Publish What You Pay movement of civil
30 society organizations working to make oil, gas
31 and mineral governance open, accountable,
32 sustainable, equitable and responsive to all
33 people. As a movement, it envisions a world
34 where all people benefit from their natural
35 resources, today and tomorrow. Launched in 2008,
36 PWYP-Canada today numbers 15 members and realizes
37 its work through advocacy, research and public
38 outreach to promote and achieve enhanced
39 disclosure of information about extractive
40 industry operations, with an emphasis on revenues
41 and beneficial owner information.

42 Transparency International Canada, or TI
43 Canada, is the Canadian chapter of Transparency
44 International. Since its foundation in 1996, TI
45 Canada has been at the forefront of the national
46 anticorruption agenda. In addition to advocating
47 legal and policy reform on issues such as

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Opening Statement by Mr. Cohen
TI Coalition

1 whistleblower protection, public procurement and
2 corporate disclosure, it designs practical tools
3 for Canadian businesses and institutions looking
4 to manage corruption risks, and serves as an
5 anti-corruption resource for organizations across
6 Canada.

7 The Coalition also relies on a working group
8 of experts to whom we are grateful for their
9 hours of volunteer work providing insights.

10 Canada's snow washing problem. Canada has
11 made international headlines as an attractive
12 money laundering destination for kleptocrats,
13 criminals, and tax dodgers. Experts estimate
14 \$47 billion to \$130 billion in illicit funds are
15 funnelled through the economy every year. At the
16 high end, that's over five percent of Canada's
17 2019 GDP. The trend of cleaning dirty money in
18 Canada has grown so widespread, there is even a
19 name for it, "snow washing."

20 It is no wonder criminals set their sights
21 on Canada, which has some of the weakest
22 corporate transparency laws in the world. There
23 are more rigorous checks to obtain a library card
24 than to set up a shell company. Criminals and
25 their intermediaries know this, and the evidence
26 was unearthed by *Toronto Star* and CBC journalists
27 digging into the 2016 leak of the Panamanian law
28 firm Mossack-Fonseca. In the Panama Paper leaks,
29 the journalists discovered that Canada was being
30 marketed as a location to bring your dirty money
31 and have it cleaned like the pure white snow.
32 Hence, snow washing.

33 As an example, Mossack-Fonseca, used a
34 [indiscernible] --

35 MR. MARTLAND: I'm wondering if Mr. Cohen --

36 MR. COHEN: [indiscernible]

37 MR. MARTLAND: Mr. Cohen --

38 MR. COHEN: [indiscernible]

39 MR. MARTLAND: Mr. Commissioner, I think it's become
40 apparent that -- and Mr. Cohen, I hope, can hear
41 me say this -- but it's become apparent that from
42 our side, the connection isn't very stable. One
43 of the things I can point out, though, to the
44 people in the room -- I'm not sure whether we've
45 actually distributed this to all participants
46 yet. But we have -- and Ms. Tam is nodding
47 yes -- we've distributed the written submissions

1 that Mr. Cohen is reading from. And so we will
2 make efforts to get a better connection and make
3 this more stable. If we needed to, we might move
4 to audio only.

5
6 (VIDEOCONFERENCE SUSPENDED)

7
8 MR. MARTLAND: But I'm going to suggest that rather
9 than us limping along with the audio cutting in
10 and out and it's difficult to follow, if Mr.
11 Weafer is amenable to me doing this, I think it
12 might make some sense that what we might look to
13 do is push pause on the attempt at using the
14 connection by video, have Mr. Weafer make his
15 submissions, and potentially CBA and CDAS as
16 well, and then what we would do is look to
17 reconnect through the video link with Toronto and
18 see if it's a better connection at that point.
19 I'm open to suggestions, but that would be my
20 suggestion for how we go forward.

21 THE COMMISSIONER: I think that's a good suggestion,
22 Mr. Martland. We'll just wait and see if Mr.
23 Cohen is accessible to us. I think we will go
24 ahead and do that.

25 MR. MARTLAND: All right. And then at the break we
26 can make an attempt to reconnect --

27 THE COMMISSIONER: All right. Thank you.

28 MR. MARTLAND: and get it right. All right, then.
29 I'll ask Mr. Weafer to address you. Thank you.

30 THE COMMISSIONER: Thank you.

31 MR. WEAFER: Good morning. My name is Chris Weafer of
32 the law firm Owen Bird, and I'm co-counsel to the
33 British Columbia Real Estate Association in this
34 inquiry.

35 THE COMMISSIONER: Thank you, Mr. Weafer.

36
37 OPENING STATEMENT BY MR. WEAFER (B.C. REAL ESTATE
38 ASSOCIATION):

39
40 MR. WEAFER: In summary, Commissioner, you've asked
41 participants to provide their views and position
42 on areas within the Commission's mandate, in
43 which the party has been granted standing. And
44 you've asked us to identify topics participants
45 would like the Commission to investigate and
46 address in the Inquiry.

47 In these comments I will describe the BCREA

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BCREA

1 and its role and summarize the activities of the
2 BCREA in regard to areas within the Commission's
3 mandate as well as the key topics BCREA would
4 like the Commission to address.

5 In summary, the BCREA's position at this
6 time is to request that the Commissioner consider
7 and support the recommendations the BCREA has
8 made in response to what have been referred to as
9 the Terms of Reference Reports.

10 The BCREA thanks the Commission for its
11 grant of participant standing in this inquiry.
12 This is an important proceeding with impacts on
13 British Columbia.

14 BCREA is the professional association
15 representing the province's 23,000 plus licensed
16 commercial and residential realtors. BCREA works
17 with its 11 member boards, each representing
18 different geographic regions in the province, on
19 professional development, advocacy, economic
20 research, and development of standard forms.
21 BCREA is established pursuant to the *Societies*
22 *Act* and has no regulatory or legislative
23 authority. However, this does not lessen the
24 seriousness with which it seeks to protect and
25 preserve the professional reputation of the real
26 estate industry and the members of BCREA who work
27 in this critical area of the B.C. economy.
28 BCREA's primary intent in this inquiry is to
29 assist in identifying effective solutions that
30 respond to the criminal activity of money
31 laundering.

32 BCREA believes actions must be taken to
33 address the conditions which have enabled money
34 laundering at the provincial, federal and
35 international levels. BCREA acknowledges that
36 the province has made two significant
37 announcements since commencement of the Inquiry
38 in proposing and scheduling legislative reforms
39 in the real estate regulatory sphere which are
40 presently a work in progress. BCREA submits that
41 to the extent that legislative process is ongoing
42 in parallel to the Inquiry, there should be
43 efforts to reconcile the respective efforts to
44 ensure that no efforts are wasted, which may
45 contribute to best results.

46 BCREA also notes that the province has moved
47 towards transparency in real estate ownership

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BCREA

1 which is consistent with recommendations BCREA
2 and others made to the Inquiry's Terms of
3 Reference Reports.

4 The regulation of realtors and the real
5 estate industry is in a state of flux in this
6 province. New taxes, new regulations and
7 legislation -- including the new *Land Owner*
8 *Transparency Act* -- and a new regulatory
9 framework have, or will have, an impact on the
10 way real estate transactions are carried out in
11 this province. BCREA's hope is that as a
12 participant in these proceedings BCREA can
13 provide a practical lens to give the Inquiry a
14 boots on the ground perspective of the current
15 and past state of the industry, and provide
16 insight as to what the industry may look like
17 following proposed changes. BCREA will also have
18 a role in facilitating and implementing materials
19 and a knowledge base stemming from the outcome of
20 the final recommendations made by the Commission.

21 BCREA will also deal with educating realtors
22 on the outcomes of this inquiry with respect to
23 any recommendations which are implemented by
24 government.

25 Ms. Darlene Hyde, CEO of the BCREA, will be
26 made available as a witness over the course of
27 the inquiry proceedings to speak to relevant
28 issues relating to BCREA and the real estate
29 sector.

30 Turning to activities of BCREA in relation
31 to the four terms of reference reports, on
32 December 17, 2019, BCREA filed comments with the
33 Commission on its activities in advance of the
34 Provincial Government establishing this inquiry.
35 Those comments in effect identify topics which
36 BCREA would like the Commission to investigate
37 and address in the hearings.

38 BCREA has been very active for the past
39 three years participating in the various
40 government-mandated initiatives regarding money
41 laundering. This has been a primary focus of
42 communication to, and education of, realtors by
43 the BCREA.

44 Turning to the first terms of reference
45 report, which I'll reference as *Dirty Money 1:*
46 *An Independent Review of Money Laundering in*
47 *Lower Mainland Casinos Conducted ...by Mr. Peter*

1 *German*, March 31st, 2018.

2 Firstly, it is important to note that
3 realtors have been subject to FINTRAC reporting
4 requirements since 2000, and responsibility for
5 such reporting has been supported by the Canadian
6 Real Estate Association and regional real estate
7 boards. Following the release of the Dirty
8 Money 1 report in June 2018, BCREA recognized the
9 need to take actions to raise additional
10 awareness around the money laundering concerns.
11 This activity included:

12
13 - working with the Real Estate Board of
14 Greater Vancouver to develop an action plan
15 to improve realtor FINTRAC compliance and
16 communicate about realtors' anti-money
17 laundering efforts;

18
19 - publishing articles in the member board
20 newsletters about BCREA's actions;

21
22 - commissioning consumer research to learn
23 about perceptions of money laundering and
24 other matters relevant to the real estate
25 industry;

26
27 - communicating with member boards and all
28 British Columbia realtors,

29
30 - inviting FINTRAC to make a presentation at
31 a September 2018 conference for managing
32 brokers;

33
34 - updating an online course about realtor
35 FINTRAC obligations;

36
37 - meeting with FINTRAC and CREA, Canadian
38 Real Estate Association, in Ottawa in
39 October 2018; and

40
41 - taking the opportunity in October 2018 to
42 inform B.C. MLAs about realtors' reporting
43 obligations as part of BCREA's annual
44 provincial lobbying conference.

45
46 Turning to notable content in the Dirty
47 Money 1 report, the *Dirty Money 1* report identified

1 the "Vancouver model" of money laundering. That
2 is, wealthy individuals borrow dirty cash and use
3 it for gambling to disguise the movement of money
4 out of China. The dirty cash is lent by an
5 underground operator based in Canada who is
6 reimbursed by a Chinese source. This was
7 referenced at page 38 of the *Dirty Money* report.

8 The suggestion is that most laundered cash is
9 reinvested into illegal enterprises and that a
10 portion is invested in real estate and luxury goods
11 and further suggests that real estate is vulnerable
12 to money laundering at various stages of the money
13 laundering process.

14 The BCREA comment and opinion on this is that
15 the BCREA, its 11 member real boards, and many
16 realtors were concerned with Mr. German's findings,
17 particularly the relevant recommendation,
18 Recommendation 45, that the Province undertake
19 research into allegations of organized crime
20 penetration of the real estate industry.

21 The BCREA opinion on this is that while
22 Mr. German's analysis seemed to rely quite heavily
23 on media reports, BCREA took his recommendations
24 seriously and committed resources to focus on the
25 concerns he raised.

26 Turning to the second terms of reference
27 report, the *Real Estate Regulatory Structure Review*
28 of 2018 by Mr. Dan Perrin, which I'll refer to as
29 the Perrin report, the BCREA had begun to take
30 action on real estate regulatory restructuring
31 before the independent review conducted by Dan
32 Perrin was announced. On April 11, 2018, BCREA met
33 with Minister James to ask for a review.

34 When the Perrin review was announced on April
35 18, 2018, BCREA committed additional resources to
36 government relations, information and educational
37 initiatives and research, as well as preparing
38 submissions to Mr. Perrin's review. These are
39 described in detail in BCREA's written submissions
40 to the Commission filed December 17, 2019. I'm
41 going to highlight them just to focus on the
42 efforts made by the BCREA to respond to these
43 concerns. The BCREA:

44
45 - sent a letter of support to Minister James
46 for the review,
47

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- 1 - communicated to all B.C. realtors,
2
3 - published an article in its external
4 stakeholder newsletter,
5
6 - published an article in its member board
7 newsletter,
8
9 - reached out to Mr. Perrin to learn more
10 about his methodology and how BCREA could
11 contribute. He ended up providing BCREA with
12 some questions from which BCREA created a
13 survey and sent it to all realtors.
14
15 - BCREA and some member boards conducted
16 focus groups with realtors and we created a
17 discussion guide and a handout,
18
19 - BCREA ultimately met with Mr. Perrin on
20 May 3, then subsequently provided a summary
21 of the survey results, as well as the full
22 results to Mr. Perrin, along with our own
23 response on May 25, 2018, and
24
25 - on May 29, BCREA communicated again with
26 all realtors about our submission to
27 Mr. Perrin and a summary of the survey
28 results.
29

30 BCREA met with Minister James on July 12,
31 2018, to discuss its submission. BCREA provided an
32 update to all realtors on July 17, 2018.

33 And on August 2018, BCREA published an
34 article in its external stakeholder newsletter
35 explaining the need for more practitioners to be
36 included on the Real Estate Council of British
37 Columbia.

38 BCRA met with opposition MLAs on September
39 12, 2018, to advocate, in part, for regulatory
40 reform and more licensee representation on RECBC's
41 governing council.

42 After the Perrin report was released on
43 September 27, 2018, BCREA immediately:

- 44
45 - published a news release,
46
47 - wrote to Minister James urging her to

1 carefully consider any changes and asking for
2 further consultations,

3
4 - summarized the report in an article for
5 member boards and realtors,

6
7 - reached out to the Office of the
8 Superintendent of Real Estate and RECBC --
9 the Real Estate Council of British Columbia,

10
11 - commissioned legal analysis.
12

13 BCREA communicated to its member real estate
14 boards and realtors and consulted with Government,
15 and ultimately in June 2019, BCREA initiated a
16 project to articulate its visions for a new
17 regulatory structure. It began with a discussion
18 with member boards on how to proceed, hired legal
19 counsel to support the project, and submitted
20 recommendations to Minister James in December of
21 2019.

22 I'll now turn to the recommendations to the
23 Real Estate Regulatory Structure Review -- the
24 Perrin report -- and the BCREA responses. I'll be
25 paraphrasing the recommendations.

26 Recommendation 1, the consolidation of OSRE
27 and RECBC as a single regulator. The BCREA
28 position response to this recommendation, from page
29 26 of the Perrin report, was the BCREA welcomed the
30 move to a single regulator but has questions about
31 the details behind implementing the move. BCREA
32 considers it vitally important that real estate
33 licensing functions be treated separate from real
34 estate development functions, and the licensing
35 unit should include a standing committee of real
36 estate licensees which would facilitate an internal
37 degree of sector expertise within the regulatory
38 body. In addition, roles and accountability need
39 to be clearly articulated.

40 BCREA hopes that the recommendations from
41 this inquiry will support this approach.

42 We turn to Recommendation 2 from the Perrin
43 report from page 26 of that report: The Ministry
44 of Finance should control real estate public policy
45 development, in combination with the regulator.

46 The BCREA position is that it supports this
47 recommendation, particularly if it includes

1 collaboration with the industry and changes are
2 based on evidence. Again, BCREA hopes this inquiry
3 will support this recommendation.

4 Recommendation 3 from the Perrin report from
5 page 29. The Government should consider whether
6 there should be oversight for regulators in British
7 Columbia and if so, what form that oversight should
8 take.

9 The BCREA position: BCREA supports the
10 concept of oversight to ensure continuous
11 improvement, as long as roles are clear, separate
12 and accountable.

13 Recommendation 4 from the Perrin report at
14 pages 30 to 31. The report recommended a policy
15 review of real estate regulatory requirements be
16 undertaken, including:

17
18 - A review of existing regulatory
19 requirements in RESA, the regulations and the
20 rules to ensure that the public policy
21 requirements are contained in RESA and the
22 regulations;

23
24 - Further, a review of the best way to move
25 beyond the regulation of those currently
26 required to be licensed to more fully
27 regulate market conduct in the public
28 interest to prevent market manipulation and
29 abuse; and
30

31 - Third, a review of outstanding Independent
32 Advisory Group recommendations that would
33 require a public policy to determine the best
34 way to proceed.
35

36 The BCREA position in response to these
37 suggestions was that the documents referred to in
38 this recommendation have evolved into a somewhat
39 confusing collection that often mixes high-level
40 public policy with operational detail. BCREA
41 submits this is the time to streamline, which will
42 result in a more understandable, accessible
43 regulatory system. BCREA also strongly believes
44 that licensees and industry should be involved in
45 that review.

46 Turning to the next two terms of reference
47 report, *Dirty Money - Part 2: Turning the Tide,*

1 again by Mr. Peter German, and the *Combatting Money*
2 *Laundering in B.C. Real Estate* expert panel,
3 Maureen Maloney, Tsur Somerville and Brigitte
4 Unger, both March 31st, 2019.

5 When the second independent review by Peter
6 German and the Expert Panel were announced on
7 September 27th, 2018, BCREA undertook extensive
8 communication with its members and government as
9 well as with the authors of the reports. These
10 extensive efforts are summarized in BCREA's
11 December 17th, 2019, filing with the Commission.

12 The BCREA sent recommendations to Mr. German
13 and the Expert Panel on March 3rd, 2019.

14 In March 2019, BCREA repeated consumer
15 research that had been conducted in September 2018
16 to monitor consumer perceptions of money laundering
17 in real estate, among other issues.

18 In March 2019, BCREA also published an
19 article in its external stakeholder newsletter
20 about its anti-money laundering efforts and on the
21 two government reviews.

22 Of particular importance, BCREA was also
23 involved in forming a multi-stakeholder real estate
24 working group in February 2019 with the B.C.
25 Notaries Association; Appraisal Institute of Canada
26 - B.C. Association; Canadian Mortgage Brokers
27 Association - British Columbia; and the Real Estate
28 Board of Greater Vancouver.

29 On April 15, 2019, the working group
30 published a statement with five key recommendations
31 for industry and government, which I'll be
32 referring to subsequently in this presentation.

33 Item 1: accept only verified funds; item 2:
34 mandatory anti-money laundering education; item 3:
35 Smart Regulation, which I'll define later in this
36 presentation; item 4: ongoing engagement; and item
37 5: timely and transparent reporting. Several
38 members from this group met with Minister Eby on
39 March 28th, 2019.

40 BCREA held its annual provincial lobbying
41 conference in April 2019, which included a
42 facilitated presentation on anti-money laundering.

43 After the government released the findings of
44 Peter German and the Expert Panel on May 9, 2019,
45 BCREA stepped up its communications efforts with
46 government, its members, and within the community.
47 These activities are also detailed in BCREA's

1 December 17th, 2019, filing with the Commission,
2 and included:

- 3
4 - summarized the findings for member boards,
5
6 - published a news release on May 13, 2019,
7
8 - wrote to Minister Eby on May 14, 2019,
9
10 - participated in a Business in Vancouver
11 discussion panel on money laundering on May
12 14, 2019,
13
14 - provided an update to all realtors on May
15 17, 2019,
16
17 - submitted an opinion editorial, which was
18 published by the *Vancouver Sun* on May 24,
19 2019,
20
21 - published articles in its member board
22 newsletter,
23
24 - published an article about the Expert Panel
25 and Peter German reports in its external
26 stakeholder newsletter, and
27
28 - wrote to Minister James on May 25, 2019.
29

30 In addition, BCREA:

- 31
32 - participated in a panel presentation at the
33 June 11, 2019, Anti-Corruption Law Program
34 event,
35
36 - met with Deputy Minister of Finance Lori
37 Wanamaker on August 13, 2019,
38
39 - met with Dan Perrin on September 12, 2019,
40 to learn more about his view on money
41 laundering regulation,
42
43 - it participated in a money laundering panel
44 as part of the Union of British Columbia
45 Municipalities Convention on September 23,
46 2019,
47

1 - it attended the Canadian Anti-Money
2 Laundering Institute conference, September
3 23-25, 2019, and
4

5 - it participated on the panel for the Anti-
6 Corruption Law Program session on November 7,
7 2019.
8

9 Throughout 2019, BCREA continued with its
10 initiative to provide resources for realtors.
11 These activities include:
12

13 - conducting a series of focus groups with
14 real estate brokerage FINTRAC compliance
15 officers and managing brokers to learn about
16 their compliance challenges and needs,
17

18 - hiring MNP to provide support,
19

20 - articulating the following projects to
21 launch in 2020, which are ongoing:
22 communications materials, an online
23 compilation of resources, workshops and a
24 community of practice for FINTRAC compliance
25 officers and managing brokers,
26

27 - publishing several newspaper articles with
28 FINTRAC compliance resources, and
29

30 - including a FINTRAC session in BCREA'S
31 October 17, 2019, Managing Brokers'
32 Conference.
33

34 BCREA, along with other members of our real
35 estate sector anti-money laundering working group
36 met with Minister Eby on December 5, 2019.

37 Turning to notable content in the second
38 Peter German report, which I'll refer to as *Dirty*
39 *Money 2*, and the BCREA responses.

40 The first notable content from page 13 and 17
41 of the *Dirty Money 2* essentially focused on
42 unfinanced purchases or cash buys.

43 The real estate sector working group
44 recommendations in response to those comments is
45 that realtors should accept only verified funds.
46 And for sectors of real estate that were not
47 already required to do so, the working group

1 recommended that they accept funds only in forms
2 that are verifiable through Canadian financial
3 institutions.

4 The BCREA analysis and positions. BCREA
5 recommends as best practices for realtors that
6 brokerages should avoid accepting cash deposits for
7 real estate transactions aside from exceptional
8 circumstances. It is important to note that
9 acceptance of cash deposits within B.C. real estate
10 has never been common practice unless there were
11 extenuating circumstances, and even then, deposit
12 amounts are typically quite modest.

13 Notable content, item 2, from the *Dirty*
14 *Money 2* report, from pages 52 and 59. The report
15 concluded that reporting of suspicious transactions
16 to FINTRAC by realtors has been dismal at best.

17 The real estate sector working group
18 recommendation -- and here is one of the five items
19 I mentioned earlier -- recommends mandatory anti-
20 money laundering education for all real estate
21 professionals subject to the reporting requirements
22 administered by FINTRAC to ensure that those
23 professionals are trained in recognizing and
24 reporting suspicious transactions. FINTRAC should
25 work with sector organizations, regulators and the
26 provincial government to improve existing resources
27 so that they better reflect real-world situations
28 and improve compliance.

29 Ongoing engagement. The Working Group
30 recommended governments and regulatory agencies,
31 including FINTRAC, better utilize on-the-ground
32 experience of real estate professionals to develop
33 compliance resources and test policy areas. This
34 will result in better crafted, practical regulation
35 and foster a culture of compliance to protect
36 consumers and the economy.

37 Timely and transparent reporting. The
38 Working Group recommended that FINTRAC implement a
39 framework to identify and report trends on a
40 regular basis and in language that is consistent
41 and understandable to professionals, the public and
42 media. This reporting system should also include
43 consistency in examinations with immediate feedback
44 designed to help industry professionals improve
45 their compliance systems.

46 The BCREA analysis and position. BCREA is
47 working with the Canadian Real Estate Association,

1 FINTRAC, and member boards to improve realtor
2 compliance. BCREA has also recommended the
3 following practices for realtors:
4

5 - educating brokerages so they can accurately
6 and effectively report suspicious
7 transactions, according to anti-money
8 laundering legislation,
9

10 - recommending that brokerages engage
11 outside, independent professionals to conduct
12 their two-year reviews, and
13

14 - that compliance officers participate in AML
15 knowledge sessions, such as the Association
16 of Certified Anti-Money Laundering
17 Specialists. Since BCREA submitted our
18 response to Mr. German, BCREA has created its
19 own initiative to create a community of
20 practice for realtors.
21

22 BCREA further submits that:
23

24 - FINTRAC should implement policies to ensure
25 consistency in examinations, including
26 immediate, specific suggestions for how a
27 real estate brokerage can improve its
28 compliance system,
29

30 - FINTRAC should reach out to sector
31 organizations to create resources --
32 including guidelines to identify suspicious
33 transactions -- that reflect real-world
34 situations,
35

36 - FINTRAC should implement public reporting
37 practices that accurately represent the
38 results of their examinations, and
39

40 - the Real Estate Council of British Columbia
41 should develop required anti-money laundering
42 licensing and relicensing education for
43 realtors. The BCREA is pleased that the
44 RECBC introduced mandatory anti-money
45 laundering training for real estate licensees
46 on January 9, 2020.
47

1 The BCREA asks that this inquiry support
2 those recommendations in its report.

3 Turning to notable content 3 from the *Dirty*
4 *Money* report, part 2, and these are from pages 13,
5 14 and 15 of the *Dirty Money - Part 2*, report. And
6 here the report recommended the applicability of
7 FINTRAC to unregulated lenders and the
8 applicability of FINTRAC to the legal profession.

9 The BCREA analysis/position on these points
10 is that to the greatest extent possible while
11 recognizing the constraints noted by the Supreme
12 Court of Canada in its *Federation* case, BCREA
13 recommends the federal government require FINTRAC
14 compliance by lawyers, law firms and non-financial
15 institution lenders, such as alternative and
16 private lenders, for private real estate
17 transactions.

18 Notable content 4 from the *Dirty Money 2*
19 report from page 14. Here the recommendation dealt
20 with the Land Title and Survey Authority and the
21 B.C. Assessment and having access to powerful
22 databases that could be used to screen for
23 suspicious activity and identify possible money
24 laundering.

25 The real estate sector working group
26 recommendations on this report relate to its
27 proposal for what they call Smart Regulation.

28 BCREA recommends that the federal government
29 amend the *Proceeds of Crime (Money Laundering) and*
30 *Terrorist Financing Act* to allow FINTRAC
31 intelligence to be made available to additional
32 regulatory authorities, including the B.C. British
33 Columbia Securities Commission and FICOM.
34 Optimally, the federal and provincial governments,
35 as well as their respective agencies, should
36 coordinate their actions, share information, such
37 as the provincial land title registry, and create a
38 comprehensive, efficient enforcement regime.

39 BCREA have further recommendations in
40 response to these reports, that:

41
42 - The federal and provincial governments, and
43 their respective agencies, should coordinate
44 their actions and policies to create a
45 comprehensive, efficient enforcement regime.

46
47 - The B.C. Government should clarify the role

1 of provincial real estate regulators in the
2 area of anti-money laundering requirements.
3

4 Turning to notable content number 5 from the
5 *Dirty Money - Part 2* report at page 14 from that
6 report. The report recommended a beneficial
7 ownership component to property registration, which
8 would provide greater clarity regarding foreign
9 ownership and, by extension, disclose whether, or
10 not the funds used for the purchase of property
11 originated offshore.

12 The BCREA analysis and position on this
13 recommendation is that the BCREA first expressed
14 support for the draft *Land Owner Transparency Act*
15 in 2018 and continues to support the provincial
16 government's initiatives in this regard.

17 Turning to the notable content in the next
18 terms of reference report, which I'll refer to as
19 the Expert Panel, which is the *Combatting Money*
20 *Laundering in B.C. Real Estate*, prepared by Maureen
21 Maloney, Tsur Somerville and Brigitte Unger, March
22 31, 2019. The first notable content I'll reference
23 is Chapter 4, which estimated the effect of money
24 laundering on B.C. real estate.

25 The BCREA analysis and position on this
26 chapter, the information is that it appreciated the
27 amount of work the Expert Panel did to estimate the
28 impact of money laundering. However, BCREA was
29 alarmed that the government and the media didn't
30 heed the qualifiers in the report: that the impact
31 is "impossible to measure, hard to estimate," from
32 page 44 of that report, and that there is a "large
33 margin of error due to lack of measured data and
34 international data inconsistency" from page 46 of
35 that report.

36 BCREA firmly believes that continued efforts
37 to reliably understand the impact of money
38 laundering on the entire economy are needed. BCREA
39 supports the efforts of this inquiry to better
40 qualify and quantify the speculative estimates on
41 the financial impact of money laundering.

42 THE COMMISSIONER: Does BCREA or any of its
43 constituents have suggestions to make as to how,
44 for example, the Commission might try and do a
45 reality check on some of the estimates of money
46 laundering in the real estate system?

47 MR. WEAFFER: I don't have any instructions at this

1 point as to that information being available.

2 THE COMMISSIONER: Right.

3 MR. WEAFER: I'll take it to the BCREA and see what
4 may be available, and we'd be happy to communicate
5 that back.

6 THE COMMISSIONER: Yeah. No, I'm certainly not
7 expecting an answer here and now. But just again,
8 it's an issue that the Commission is concerned
9 with.

10 MR. WEAFER: It's a big issue.

11 THE COMMISSIONER: Thank you.

12 MR. WEAFER: Thank you.

13 In terms of notable content 2 from the Expert
14 Panel, this is from page 75. The recommendation
15 was the B.C. government should implement the Land
16 Owner Transparency registry as quickly and
17 effectively as possible. And as noted earlier, the
18 BCREA expressed support for the draft *Land Owner*
19 *Transparency Act* in 2018 and continues to support
20 the concept.

21 Notable content number 3 from the Expert
22 Panel report from page 76 of that report
23 recommended the B.C. government should develop a
24 discussion paper with draft legislation for
25 consultation about the implementation of a full
26 corporate beneficial ownership registry covering
27 all legal persons that is consistent with best
28 practices and that integrates with the *Land Owner*
29 *Transparency Act*.

30 The real estate sector working group
31 recommendation on this recommendation from the
32 Expert Panel was that the BCREA encourages ongoing
33 engagement with the real estate industry. BCREA
34 recommends governments and regulatory agencies,
35 including FINTRAC, better utilize the on-the-ground
36 experience of real estate professionals to develop
37 compliance resources and test policies.

38 The BCREA analysis and position on this is it
39 appreciates that the recommendation is for a
40 discussion paper as it is best to get practical
41 input. The government published its consultation
42 paper on January 17, 2020, and BCREA is presently
43 collecting input for its response.

44 Notable content 4 from the Expert Panel, from
45 page 77. The B.C. government should implement the
46 recommendations of the *Real Estate Regulatory*
47 *Structure Review* report, 2018. The BCREA position

1 is that it supports restructuring of the real
2 estate regulatory framework but emphasizes the need
3 for industry input in developing and governing the
4 framework.

5 Notable content number 5 from the Expert
6 Panel report at page 78. The B.C. Minister of
7 Finance should take the steps necessary to place
8 the onus for compliance with the *Real Estate*
9 *Services Act* and the *Proceeds of Crime (Money*
10 *Laundering) and Terrorist Financing Act* directly on
11 individual real estate licensees.

12 The BCREA analysis/position is that this is
13 coming as part of the Office of the Superintendent
14 of Real Estate's fall 2019 consultation based on
15 the discussion paper *Reframing the Role of Managing*
16 *Brokers in B.C.* In November and December 2019 and
17 into January 2020, BCREA worked with member boards
18 to consult with realtors and BCREA submitted its
19 response signed by all of the member boards on
20 January 20, 2020.

21 Turning to notable content 6 from the Expert
22 Panel report, and this is from page 79 of that
23 report, the recommendation was the BC Minister of
24 Finance should take the steps necessary to require
25 that real estate developers be licensed under a
26 regulatory regime and eliminate the exemption for
27 salespersons who are employees of developers. This
28 is at page 79 of the Expert Panel report.

29 The BCREA analysis/position is the BCREA is
30 on record supporting elimination of the exemption
31 from the *Real Estate Services Act* for developers'
32 salespersons. However, licensing for developers
33 further complicates the real estate regulatory
34 framework.

35 Notable content 7 from the Expert Panel
36 report at page 81, the B.C. government should
37 consider introducing unexplained wealth orders in
38 British Columbia.

39 The BCREA analysis/position: BCREA has urged
40 caution with this recommendation to ensure
41 appropriate checks and balances are in place.

42 Notable content number 8 from the Expert
43 Panel report, tracking reports made on the *Dirty*
44 *Money - Part 2* report. The Expert Panel supported
45 FINTRAC being applicable to mortgage lenders and
46 mortgage intermediaries and supported FINTRAC
47 effectively being applicable to legal

1 professionals. And this is at page 83 and 84 of
2 that report.

3 The BCREA position has been set out above,
4 that subject to the Supreme Court of Canada
5 parameters in the *Federation* case, the BCREA
6 recommends to support this recommendation.

7 Turning to notable content number 9 from the
8 Expert Report, and this is from page 85 of that
9 report. The B.C. Minister of Finance should
10 require reporting entities in the real estate
11 sector to conduct know your customer due diligence
12 on beneficial ownership.

13 The BCREA analysis/position is that the
14 Canadian Real Estate Association is on record as
15 not supporting a requirement for realtors to
16 conduct due diligence on beneficial ownership in
17 their submission and presentation to the Federal
18 Standing Committee on Finance on March 27, 2018.

19 Turning to notable content number 10 from the
20 Expert Panel report, page 85 and 86, that the
21 Minister of Finance should recommend to her federal
22 counterpart that the *Proceeds of Crime* legislation
23 be amended to authorize FINTRAC to provide
24 information to specified provincial regulators and
25 anti-money laundering investigative agencies.

26 The BCREA analysis on this recommendation is
27 that the federal and provincial governments and
28 their respective agencies should be coordinating
29 their actions and policies to create a
30 comprehensive, efficient enforcement regime. The
31 adoption of this concept is akin to the Smart
32 Regulation proposal referenced above.

33 Turning to notable content 11 -- and I'm
34 going to combine from pages 86 to 94 of the Expert
35 Panel report. It lists a series of
36 recommendations. And to paraphrase, they encourage
37 that FINTRAC enhance its quality of reporting, its
38 reporting of intelligence and statistics, assist in
39 better training of reporting entities, develop
40 education and training that is industry specific.
41 It recommends the BCREA should add anti-money
42 laundering the mandate of B.C. regulators. It
43 recommends the principle of a data-sharing
44 framework be established. It recommends a review
45 of data sharing and confidentiality. It recommends
46 that mortgage lending businesses conduct and
47 maintain know your customer records and records of

1 the source of mortgage payment funds. And it
2 recommends the B.C. Minister of finance should
3 create institutional coordination mechanisms among
4 the financial investigation units and the various
5 federal and provincial regulators.

6 The real estate sector's working group
7 recommendation as a response to this is again akin
8 to the concept and response to the *Dirty Money 2*
9 report, which was fairly similar, that the real
10 estate sector -- that mandatory anti-money
11 laundering education be implemented for all real
12 estate professionals, subject to the reporting
13 requirements administered by FINTRAC to ensure that
14 those professionals are trained in recognizing and
15 reporting suspicious transactions.

16 Again, we recommend timely and transparent
17 reporting. Also, the BCREA submits as a best
18 practice BCREA recommends educating brokerages so
19 they can accurately and effectively report
20 suspicious transactions, according to AML
21 legislation. BCREA again recommended that FINTRAC
22 implement best practices on examinations, outreach
23 and public accounting practices noted above in
24 response to the *Dirty Money 2* recommendations.

25 BCREA ultimately recommends that the federal
26 and provincial governments and their respective
27 agencies coordinate their actions and policies to
28 create a comprehensive, efficient enforcement
29 regime and avoid duplication of reporting
30 compliance for realtors.

31 Lastly, item 12 of notable content from the
32 Expert Panel at page 95, the recommendation was
33 that the B.C. Minister of Finance should make every
34 effort to convince her provincial colleagues of the
35 importance of making combatting money laundering a
36 provincial priority and using provincial finance
37 and real estate related regulatory changes in
38 coordination with federal and other provincial
39 agencies to combat money laundering consistent with
40 the panel's recommendations.

41 BCREA's position on this is it does not have
42 an existing position specifically on this point,
43 but this makes sense and aligns with the BCREA's
44 support of anti-money laundering efforts in the
45 province, including BCREA's participation in this
46 proceeding.

47 In conclusion, on behalf of our client, the

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1 British Columbia Real Estate Association, we thank
2 you for the opportunity to make these opening
3 comments and look forward to working cooperatively
4 with all parties in the inquiry process.

5 And also, before closing, I would like to
6 acknowledge and thank your inquiry team, which has
7 been doing an exceptional job getting this inquiry
8 off the ground.

9 THE COMMISSIONER: Thank you, Mr. Weafer.

10 MR. WEAVER: Those are my submissions.

11 THE COMMISSIONER: Thank you. Yes, Mr. Westell.

12 MR. WESTELL: Thank you. Good morning, Mr.

13 Commissioner. My comments will be considerably
14 more brief than the previous submission.

15

16 OPENING STATEMENT BY MR. WESTELL (CBABC and CDAS):

17

18 MR. WESTELL: I am here today to offer opening remarks
19 on behalf of two organizations: the Canadian Bar
20 Association, British Columbia Branch, the CBABC,
21 and the Criminal Defence Advocacy Society, CDAS.

22 These two organizations are very different in
23 nature, but we share a grant of standing at this
24 Commission. I am authorized by both organizations
25 to make these submissions. I'm involved with both
26 organizations. With respect to CDAS, I'm the
27 Vancouver regional representative, and with respect
28 to the CBA, I am a member at large of the CBA's
29 National Criminal Justice Section.

30 But I want to be clear for the record that,
31 for the purposes of this Commission, I am counsel
32 for CDAS. I am assisting in the CBA, our standing
33 partner, with the submission.

34 It's my pleasure to have the opportunity to
35 speak to the Commission today regarding the role of
36 lawyers in the serious money laundering issue in
37 our province.

38 A little bit of background about both
39 organizations for the benefit of the Commission and
40 the public. The CBA is a national organization
41 with a membership of over 38,000 jurists, judges,
42 academics and law students from across Canada. The
43 CBA has been in existence since 1896 and was
44 formally incorporated by an act of Parliament in
45 1921. Branches exist in every province and
46 territory in Canada. CBABC, the B.C. branch, has
47 over 7,000 members in a wide range of practice

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1 areas, including criminal justice, real estate,
2 corporate law, family law, and civil litigation.

3 Part of the mandate of the CBA and the CBABC
4 includes formulating positions for the legal
5 profession and then advocating those positions to
6 the public, to public bodies, public officials, and
7 the government itself.

8 The CBA also intervenes on cases at the
9 Supreme Court of Canada and other appellate courts
10 on matters of concern to the profession.

11 Its mission is the following:

- 12 - to improve the law, to improve the
- 13 administration of justice
- 14
- 15 - to improve and promote access to justice
- 16
- 17 - to promote equality in the legal profession
- 18 and in the justice system
- 19
- 20 - to improve and promote the knowledge,
- 21 skills, ethical standards, and well-being of
- 22 members of the legal profession
- 23
- 24 - to represent the legal profession, and
- 25
- 26 - to promote the interests of the members of
- 27 the Canadian Bar Association in British
- 28 Columbia.
- 29
- 30

31 It is an expressed value of the CBABC to
32 improve the administration of justice, which
33 includes the preservation of the independence of
34 the judiciary, the legal profession, and the
35 members that operate within in them.

36 The Criminal Defence Advocacy Society that
37 I'll refer to as CDAS was founded only recently, in
38 2015. It's a non-profit society formed by members
39 of the criminal defence bar in British Columbia,
40 and it is engaged in advocacy, law reform, and the
41 education of its members. Our members are
42 particularly concerned with the rule of law, the
43 independence of the bar, and the constitutional
44 rights of accused individuals. Our organization
45 has intervened at the Supreme Court of Canada and
46 has attempted to provide a unique perspective on
47 issues of public policy.

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1 Both CBABC and CDAS recognize that the work
2 of this commission will raise important legal
3 principles and practice issues that will affect
4 both members of the bar and the private citizens
5 that our members serve.

6 Moving to our joint position, both the CBABC
7 and CDAS acknowledge and agree with many of the
8 overarching findings of the terms of reference
9 reports. There can be no doubt that money
10 laundering has become a serious problem in Canada
11 and, in particular, British Columbia, and one
12 warranting the valuable analysis found within the
13 terms of reference reports and warranting the
14 attention of this commission. Both CDAS and the
15 CBABC seek to provide meaningful assistance in the
16 search for answers and improvements that will
17 lessen the extent of this problem and to benefit
18 British Columbians.

19 At the same time, both organizations are wary
20 that the zealous search for solutions to the money
21 laundering problem will lead to investigative and
22 regulatory overreach that could endanger the
23 independence of lawyers, the privacy of private
24 citizens, and the rights of all Canadians to a free
25 and just society.

26 Within the terms of reference reports,
27 lawyers have been denigrated as "black holes" in
28 relation to the money laundering crisis.

29 Solicitor-client privilege has been
30 downplayed as something that "lawyers enjoy and
31 zealously guard" without reference to the fact that
32 it is in fact an ancient and absolutely essential
33 aspect of our legal system that is there for the
34 protection of private citizens, our clients, who
35 seek the advice of lawyers for all manner of
36 important life decisions.

37 The terms of reference reports appear
38 critical of this decision of our nation's highest
39 court in *Canada v. Federation of Law Societies of*
40 *Canada*, and that's a case that's come up frequently
41 in these opening submissions. I'll note
42 particularly its holding that the *PCMLTFA* regime
43 should not apply to the legal profession.

44 We say that underlying that criticism is a
45 failure to recognize the nature and extent to which
46 law societies and the ethical and legal obligations
47 of trusted lawyers are themselves a protective

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1 measure against money laundering.

2 Although the CBABC is open to consulting with
3 the federal government on establishing ways to
4 incorporate lawyers into existing anti-money
5 laundering legislation in a manner which does not
6 offend solicitor-client privilege, we contend that
7 the current requirements under the Law Society
8 rules are effective. Lawyers are precluded from
9 asserting solicitor-client privilege during a Law
10 Society audit or investigation, as it stands. The
11 system does work, with about 250 investigations
12 conducted annually in British Columbia by the Law
13 Society.

14 It's also worth noting, of course, the
15 obvious, that lawyers in British Columbia are
16 subject to the same *Criminal Code* obligations as
17 the public when it comes to money laundering, in
18 particular s. 462.31(1) of the *Criminal Code*, and I
19 won't read that in.

20 Effectively under the law, no lawyer can
21 knowingly deal with any property that is the
22 proceeds of crime. And if that lawyer is reckless
23 in determining where the funds were obtained or
24 derived, they can be charged under this section
25 like anybody else.

26 As well, members of the legal profession are
27 obligated to adhere to strict legislation,
28 regulations, rules and a code of professional
29 conduct as prescribed by our Law Society. As the
30 regulator of our profession, the Law Society
31 monitors the potential risks to the public that we
32 serve, and adjust the rules and requirements to
33 minimize any perceived or actual risks.

34 The Law Society of course has standing in
35 this inquiry and will provide the Commission with
36 the details of the many rules that all lawyers must
37 follow, including careful identification of new
38 clients, verification of that identity, and an
39 ongoing monitoring of the relationship to ensure
40 that any source of funds is legitimate.

41 Lawyers are simply not allowed to accept
42 funds into trust accounts unless those funds relate
43 to legal services they are providing. The
44 profession is held to the highest standards, and
45 lawyers are required to step down and withdraw in
46 circumstances where transactions or the source of
47 funds is suspicious in nature.

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1 We would suggest that the standards set by
2 the Law Society in British Columbia, as well as in
3 other provinces, are among the strictest of any
4 profession, and you will be considering that in
5 your inquiry.

6 As any practising lawyer will tell you, a
7 failure to adhere to the rules set out by the Law
8 Society will result in prompt review and
9 investigation of the lawyer and their practice,
10 often resulting in sanctions, penalties, and
11 restrictions on practice. Unlike many other
12 professional regulators, the Law Society is very
13 clear that their only mandate is to protect the
14 public, not the lawyers who they license to serve
15 the public.

16 Over the past 20 years, the national CBA has
17 provided many submissions and comments on proposed
18 legislative and regulatory changes which impact the
19 legal profession and its ability to provide access
20 to justice. Like in the *Federation* case, the CBA
21 has intervened in cases that advanced and were
22 heard by our highest court.

23 The CBA hopes to draw on the same expertise
24 that led to the development of those submissions in
25 attempting to provide assistance in this forum.

26 With respect to the many recommendations
27 contained within the terms of reference reports
28 that are the subject of this inquiry, the CBABC and
29 CDAS would like to take this opportunity to make
30 the following initial comments concerning the
31 recommendations. And they are, I will say now,
32 relatively broad in scope. We of course expect to
33 make much more specific submissions about
34 particular pieces of evidence as we move forward.

35
36 a) There is no evidence, we say, to suggest
37 that the lack of disclosure for a lawyer's
38 trust account and transaction is the reason
39 that there is such a dismal rate of
40 conviction for money laundering type
41 offences.

42
43 b) We believe that by disclosing financial
44 records which would include the names of
45 clients, lawyers would be in breach of their
46 duty to maintain client confidentiality
47 unless that disclosure is to the Law Society,

1 which already has the authority to review
2 such accounts.

3
4 c) There is no evidence to suggest that the
5 ability of a British Columbia lawyer to act
6 as a realtor has resulted in any money
7 laundering in B.C. Again, lawyers operate
8 under strict regulatory and professional
9 requirements that arguably exceed those of
10 the real estate industry.

11
12 d) Legislation requiring disclosure of
13 beneficial ownership of corporations should
14 be developed after consultation with the
15 CBABC to ensure that the proposed solutions
16 are consistent with the duty to maintain
17 client confidentiality.

18
19 e) We are concerned that the unexplained
20 wealth orders recommendation is too broad in
21 nature and would create a presumption that
22 shifts the burden to clients to prove any and
23 all sources of funds that they may have are
24 not illegal. There is already a civil remedy
25 for forfeiture of property that is crime-
26 related, and this new proposal creates an
27 unfair and unjustified burden on all
28 citizens. The residents of British Columbia
29 are still entitled to privacy, and this
30 recommendation has a far-reaching impact that
31 could cause more harm than good.

32
33 f) In order for British Columbians to refute
34 the suggestion that it is a "safe haven" for
35 money laundering, more effort needs to be
36 focused on the actual prosecution of
37 criminals who are found to be conducting this
38 illegal activity. Currently the rate of
39 prosecution in Canada is amongst the lowest
40 of all nations that have anti-money
41 laundering legislation. The anti-money
42 laundering legislation and reporting
43 requirements are of little impact if
44 criminals realize that they can continue
45 operations without risk of actually being
46 charged due to a lack of police or
47 prosecutorial resources to manage the large

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1 volume of information provided to FINTRAC and
2 other tracking agencies.
3

4 In closing, we at the CBABC and CDAS reaffirm
5 that we are eager to join the endeavour of
6 determining causes and seeking solutions to the
7 problem of money laundering in British Columbia.
8 We wholeheartedly welcome the terms of reference
9 reports. As mentioned, we agree with the overall
10 assessment that a crisis is afoot and also agree
11 with many of the specific recommendations. We
12 adamantly disagree with others.

13 Despite this, we welcome the dialogue that
14 will arise from our opposition to criminal,
15 regulatory and administrative overreach during the
16 course of these hearings. After all, it is the
17 essence of a free and democratic society that we
18 seek the truth, knowledge, and enlightenment
19 through an exchange of different ideas, argument,
20 and a willingness to listen to those we, at least
21 initially, disagree with.

22 CBABC and CDAS fundamentally believe that all
23 residents of British Columbia should have the
24 opportunity to obtain legal advice in a
25 confidential, secure setting without the fear of
26 having their personal information shared with a
27 national agency, and we are concerned that an
28 effort to damage the ancient and sacrosanct quality
29 of the solicitor-client relationship would align
30 with a broader, more disturbing trend of devaluing
31 the role of lawyer in a free and democratic
32 society.

33 In the last two years, we have seen the
34 government in British Columbia adopt the Civil
35 Resolution Tribunal, and by doing so effectively
36 remove the role of lawyers from a large proportion
37 of legal disputes. And recently in the spirit of
38 promoting its new no-fault insurance regime, we
39 have heard our own provincial Attorney General
40 point to British Columbia's lawyers as the reason
41 that the previous system was apparently
42 ineffective.

43 We find that trend disturbing. We are
44 organizations that seek to represent a strong and
45 independent bar. We seek to stand up for the
46 privacy rights of private citizens of British
47 Columbia, and we seek to assist in educating the

1 public of this inquiry as to why it is that the
2 work of lawyers is so vital in promoting and
3 ensuring justice as opposed to frustrating it.

4 Thank you very much.

5 THE COMMISSIONER: Thank you, Mr. Westell.

6 So I think, Mr. Martland, we can take the
7 morning adjournment and explore whether or not we
8 can resume with Mr. Cohen.

9 MR. MARTLAND: I think that makes sense, and I would
10 suggest we might adjourn until 11:00 a.m. to buy
11 ourselves a little time to fix things.

12 THE COMMISSIONER: That makes sense.

13 MR. MARTLAND: Thank you.

14 THE COMMISSIONER: All right. Thank you.

15 THE REGISTRAR: All rise. The hearing will be
16 adjourned until 11:00 a.m.

17
18 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
19 (PROCEEDINGS RECONVENED)
20

21 THE REGISTRAR: All rise. The hearings have resumed.

22 THE COMMISSIONER: Yes, Mr. Martland.

23 MR. MARTLAND: Thank you. Mr. Commissioner, we think
24 we have our link with Mr. Cohen now fixed and it's
25 working much better. I thought I would just point
26 out that my suggestion was he not need to start
27 again. His written opening statement, I think, is
28 already available on the Transparency website. It
29 will be very shortly later today on the Commission's
30 website as well, as are the other written
31 submissions that we've received. And so those are,
32 to the extent that anyone wants to go back and
33 relive this, they can read those statements on our
34 website.

35 My other little pointer before we resume is
36 just as a reminder to counsel here to make sure
37 they develop the habit of signing in, please, so
38 that we have a note of who's in attendance for the
39 purpose of transcripts later on. Thank you.

40 THE COMMISSIONER: Thank you, Mr. Martland. Yes, Mr.
41 Cohen. I think we'll be able to hear you now.

42 MR. COHEN: Okay. Thank you.
43
44
45
46
47

(VIDEOCONFERENCE RESUMES)

OPENING STATEMENT BY MR. COHEN (TI COALITION)
continuing:

MR. COHEN: Okay. Thank you, Commissioner, and apologies for the technical problems earlier.

THE COMMISSIONER: No, that's fine.

MR. COHEN: I will restart where I believe our connection left off, on page 5, paragraph 14.

THE COMMISSIONER: Yes.

MR. COHEN: If you have my printed testimony in front of you.

THE COMMISSIONER: I do.

MR. COHEN: Snow washing is not the only notorious term tied to Canada's money laundering problem. As the residents of British Columbia know all too well, and indeed what is the basis for this Commission, there is also the term "the Vancouver Model," as reported by then *Vancouver Sun* journalist, Sam Cooper. The term was coined by intelligence agencies based in our international partner governments to describe illicit flow of funds connecting gambling in China and Vancouver, and in turn linking that to underground banks, housing, and domestic crime in British Columbia.

Canada recently fell four points to 12th place in Transparency International's global Corruption Perceptions Index, landing behind peers such as Germany and Norway. The annual index pointed to Canada's snow washing problem as one of the reasons for the downgrade.

There are a number of gaps within Canada's anti-money laundering law, *the Proceeds of Crime (Money Laundering) and Terrorist Financing -- PCMLTFA* -- but our Coalition, as well as many experts and international bodies agree on a key problem: Canada's weak beneficial ownership regime. Not everyone who owns a secret company is a criminal. Thousands of legitimate shell companies operate in the country. But gaps in Canada's laws allow the true owners of companies to remain anonymous, giving criminals entry to our economy and communities, where they do significant harm.

The Coalition recommends greater transparency

1 of the true owners of companies, known as
2 beneficial owners or ultimate beneficial owners.
3 Making ownership information public can deter
4 criminals from using anonymous companies to hide
5 dirty money.

6 Federal, provincial, and territorial
7 governments already have business registries, which
8 are updated daily as companies are created,
9 dissolved, amalgamated, or undergo ownership,
10 address, or other information changes.

11 Beneficial ownership transparency would add
12 information about the true owners of companies to
13 existing business registries. While not all
14 details are public, enough information is available
15 to deter those who want to snow-wash money through
16 a Canadian company.

17 Since the explosive 2016 Panama Papers leaks,
18 the federal government has vowed to crack down on
19 massive offshore tax avoidance and evasion, but
20 Canada cannot tackle sophisticated global networks
21 without strengthening secrecy laws at home. Until
22 it lifts the veil on anonymous ownership, shell
23 companies will be used for financial crimes,
24 costing both federal, provincial, and territorial
25 governments billions in lost revenues.

26 How anonymous shell companies impact Canada's
27 economy. Money laundering, and particularly
28 beneficial ownership transparency can at times seem
29 like an abstract issue for many Canadians,
30 predominantly on how they are affected. But from
31 facilitating crime, to housing affordability, and
32 business due diligence, Canada's snow washing
33 problem affects Canadians across many sectors and
34 individuals.

35 On organized crime and corruption. Money
36 laundering facilitates organized crime, drug and
37 sex trafficking, and the fentanyl crisis. Major
38 cases of international tax evasion have been linked
39 to anonymous entities in Canada, including the
40 largest tax fraud operation in Russian history.
41 For one example, between 2008 and 2013, Russian
42 crime syndicates sprinkled illicit proceeds using
43 entities they incorporated across Canada, from
44 Ontario and New Brunswick to Alberta and B.C.

45 Negative consequences are also felt far
46 beyond our borders. Shell companies are used by
47 criminals and corrupt officials across the world,

1 from violent dictators and drug lords to
2 terrorists. A World Bank study found 70 percent of
3 large corruption cases involved hidden ownership
4 and the misuse of shell companies.

5 Given the scale of the social turmoil that
6 money laundering and anonymous corporate ownership
7 cause, the RCMP's success rate for convicting money
8 laundering is a fraction of what it is for other
9 crimes. In 80 percent of cases, a suspect cannot
10 be identified and only a third of the cases that do
11 go to trial result in conviction.

12 Investigators are frustrated by the inability
13 to identify the owner of a company used to hide
14 criminal activity. Law enforcement must request
15 the information, which delays investigations and
16 risks tipping off criminals. A public beneficial
17 ownership registry can help authorities identify
18 culprits of financial crimes discreetly.

19 Housing. Canadian cities are appealing to
20 criminals. The amount of money laundering in B.C.
21 real estate hit \$5.3 billion in 2018, almost 5
22 percent of the province's real estate transactions,
23 according to estimates by the B.C.-appointed expert
24 panel on money laundering.

25 Transparency International Canada's 2016
26 report, *No Reason to Hide*, found nearly half of
27 Vancouver's most valuable properties were hidden
28 behind shell companies, trusts and nominee owners.

29 Vancouver isn't alone. TI Canada's joint
30 2019 follow-up report with Canadians for Tax
31 Fairness and Publish What You Pay-Canada --
32 *OPACITY: Why Criminals Love Canadian Real Estate*
33 *(And How to Fix It)* -- examined more than
34 1.4 million property transactions in the Greater
35 Toronto Area, where prices have skyrocketed.
36 Companies were three times more likely than
37 individuals to buy real estate without a mortgage.
38 At least \$20 billion entered the GTA housing market
39 in the past decade without oversight or due
40 diligence on beneficial owners.

41 Montreal also made headlines in 2017 after
42 investigative reporters discovered nearly
43 \$30 million in property was bought by government
44 officials and politically exposed persons from
45 several West African countries with endemic
46 corruption.

47 Tax avoidance and tax evasion. Governments

1 lose billions to tax evasion and avoidance every
2 year. Experts estimate as much as 10 percent of
3 global GDP is stashed in offshore wealth. The
4 situation is worse in developing regions like the
5 Middle East and Latin America, where more than half
6 of all private wealth flows offshore.

7 Scandals such as the Panama Papers have
8 offered a glimpse into Canada's role in
9 international tax dodging. Close to 900 Canadians
10 were named in the 2016 Panama Papers leaks and
11 3,000 in the 2017 Paradise Papers, but Canada has
12 also been contributing to the global problem with
13 its weak transparency rules.

14 Researchers found "a large fraction" of
15 offshore wealth is traced back to shell companies,
16 trusts, foundations, and personal holding companies
17 incorporated in other tax havens. Without a public
18 registry of beneficial owners, Canada acts as a
19 haven to anyone wanting to avoid detection for tax
20 reasons.

21 As billions escape into an underground
22 economy, the tax burden shifts to honest Canadians
23 and businesses. Canada's total tax gap -- how much
24 is owed in taxes versus how much the government
25 collects -- could be as high as \$47 billion a year,
26 according to a 2017 report from the Conference
27 Board of Canada. In 2019, the CRA estimated the
28 corporate tax gap to be between \$9.4 billion and
29 \$11.4 billion.

30 What is being done. Canada moves towards
31 beneficial ownership transparency. For years,
32 advocacy groups and anti-money laundering experts
33 have urged the federal government to improve
34 beneficial ownership transparency.

35 In June 2019, federal, provincial and
36 territorial finance ministers agreed to explore
37 solutions to financial crime, including looking at
38 a public registry of company beneficial owners. We
39 are pleased to see that the federal government is
40 currently conducting consultations on a public
41 registry of beneficial ownership. This
42 consultation comes on the heels of a consultation
43 in Quebec and at the same time as a consultation in
44 B.C on this issue.

45 In fact, B.C. has led Canada on beneficial
46 ownership transparency with the passage of the *Land*
47 *Owner Transparency Act*, which requires companies,

1 trusts and partnerships to disclose beneficial
2 owners.

3 This should put the federal government and
4 other provinces and territories on alert. Just as
5 more countries implement public registries and more
6 of the world's dirty money flows to Canada, the
7 same will likely happen among provinces and
8 territories.

9 A 2020 Global News investigation found that
10 since B.C. increased anti-money laundering efforts
11 in the province, crime groups have shifted their
12 focus to Ontario. And, jurisdictions that fail to
13 act will be vulnerable.

14 In other countries, governments are realizing
15 a public registry can help expose the agents behind
16 illegitimate operations and prevent them from
17 setting up shop in the first place.

18 Countries like the United Kingdom, Denmark,
19 Ireland, and Ukraine have already introduced public
20 registries. All EU member states have agreed to
21 implement public registries by January 2020. The
22 UK plans to do the same with its overseas
23 territories by 2023. Even known tax havens such as
24 the Cayman Islands committed to a public registry
25 under the UK's rules. At the time of publication
26 of this testimony, almost 50 countries, including
27 the EU, have implemented or plan to roll out
28 beneficial ownership registries, a majority of
29 which are public.

30 Global standards are moving toward greater
31 beneficial owner transparency as well. The
32 Extractive Industries Transparency Initiative,
33 EITI, a global standard for good governance of the
34 oil, gas and mining industry, required 52 member
35 countries to disclose beneficial owners for mining
36 and oil and gas projects by 2020. EITI will
37 publish the information, enabling law enforcement,
38 civil society and others to scrutinize the data.

39 At least 20 countries under the Open
40 Government Partnership committed to advance global
41 norms on beneficial ownership transparency as of
42 July 2019, including Canada.

43 Canada can learn from its peers that have
44 taken a proactive role in enhancing corporate
45 secrecy and accountability.

46 How Canada can create an effective publicly
47 accessible registry. There are critical components

1 to get right for a public beneficial ownership
2 registry to achieve its intended impact. These
3 include the threshold for ownership disclosure,
4 data fields to be collected, enforcement and
5 penalties, validation of information, and balancing
6 disclosure and privacy.

7 The higher the threshold on beneficial
8 ownership control disclosure, the easier it is for
9 criminals to hide. The UK's public registry has a
10 25 percent or more control threshold, but
11 stakeholders have recommended lowering it to 10
12 percent. NGOs recommend lowering it even further
13 as criminals wishing to stay anonymous can
14 restructure the distribution of shares to evade
15 threshold requirements.

16 The B.C. government has set an example for
17 Canada by setting *LOTA* threshold for a significant
18 number of shares at 10 percent.

19 Fields of information to be collected. In
20 line with global standards, we believe that
21 businesses should disclose the following
22 information:

- 23
24 - Describing the beneficial ownership
25 relationship: information on the nature and
26 extent of beneficial interest, politically
27 exposed person status and/or Head of
28 International Organization Standard;
29
30 - Identifying the beneficial owner: unique
31 identifier -- generated by the registry
32 itself -- full legal name, month and year of
33 birth, service or correspondence address, and
34 country of usual residence.

35
36 On enforcement and penalties. Businesses
37 must report changes such as sale of shares or
38 ownership. Failure to disclose information should
39 be subject to a financial penalty big enough to
40 deter criminals. Launderers of large amounts of
41 money will see smaller penalties as simply the cost
42 of doing business.

43 An effective registry also requires a central
44 office that is staffed with a mandate. Registrars
45 with expertise in corporate law would be skilled at
46 detecting risks and determining when additional
47 verification or investigation is required.

1 Validation of information and technical
2 solutions. Beneficial owners should be verified
3 just as individuals are required to do so to drive
4 a car or open a bank account. Examples of ID
5 include passports, driver's licenses, or provincial
6 identification cards with photo.

7 Proof of identity should be accessible to law
8 enforcement or regulatory bodies but restricted
9 from the public. Additional requirements could
10 include a sworn statement or attestation of
11 ownership.

12 Third-party verification systems, such as
13 digital IDs, have the potential to make processing
14 beneficial ownership information easier across
15 jurisdictions. Several banks and financial
16 institutions have adopted emerging technologies
17 such as Verified.Me, which allow individuals to
18 securely confirm their identities online.

19 All major Canadian banks are looking to a
20 digital framework. The Canadian Bankers
21 Association has called for a federal digital ID
22 system to reduce fraud and improve compliance while
23 reducing background checks and costs.

24 One option is a registry that allows
25 provinces and territories to collect beneficial
26 ownership data and provide it to a centralized
27 database. Aligning the information that is
28 collected in each province and territory and
29 sharing it in a central database would ensure
30 harmonization of systems, creating a level playing
31 field for all businesses in Canada in this issue,
32 and ease investigations across jurisdictions. The
33 process should follow the international Beneficial
34 Ownership Data Standard, which can be modified as
35 data requirements change.

36 Balancing beneficial ownership transparency
37 and individual privacy. It is important to
38 distinguish between secrecy and privacy. Secrecy
39 is the act of concealing something. Privacy is an
40 individual right. As anti-corruption advocates
41 have pointed out, there is no justification for
42 corporate secrecy.

43 Registries should be designed to protect
44 privacy. The UK registry contains beneficial owner
45 details such as full date of birth, but only the
46 month and year are publicly disclosed. The owner's
47 service address is publicly available, but their

1 residential address is not.

2 Canada should apply restrictions to safeguard
3 privacy. Information such as country of origin
4 could attract racial profiling and such fields
5 should be restricted to the public -- or from the
6 public.

7 In very rare cases, involvement in a business
8 or associated wealth could make individuals targets
9 for kidnapping or extortion. However, in Canada,
10 many large profitable corporations are publicly
11 traded and owners with 10 percent or more of voting
12 shares are listed via the System for Electronic
13 Disclosure by Insiders. Information about wealth
14 is already public.

15 The UK uses a rigorous process for exempting
16 information and offers no blanket exemptions for
17 any group of people. Of more than one million
18 companies that provided beneficial ownership
19 information, only 270 applied to have their
20 information withheld on the basis it would put them
21 at risk, and only five of those requests were
22 granted. In exceptional cases, the owner's
23 information is still available to authorities.
24 Other details are protected. Canada could consider
25 a similar approach where on a case-by-case basis
26 legitimate concerns of risks to disclosing this
27 inform are reviewed and considered.

28 Canada has a process in place to mitigate
29 risks. Any time a federal program is created or
30 changed, a privacy risk-assessment exercise is
31 carried out. Assessments are reviewed by the
32 Privacy Commissioner of Canada, which may advise
33 additional measures to protect privacy. We would
34 note that at a 2019 Transparency International
35 Canada event, Ontario Privacy and Access to
36 Information Commissioner, Brian Beamish, expressed
37 his view that he did not expect a public beneficial
38 ownership registry to create privacy concerns.

39 Minimal privacy risks would ultimately be
40 eclipsed by broader societal gains of enhanced
41 transparency and crime prevention.

42 Low Regulatory Burden for Business. Since
43 the UK launched its public registry in 2016, a
44 majority -- 64 percent -- of businesses have found
45 the publicly available information useful. Close
46 to a third considered the information very useful.

47 The minor cost to businesses to implement and

1 maintain a registry would be eclipsed by greater
2 compliance savings, especially among smaller
3 companies with limited resources. The median cost
4 of compliance in the UK was relatively small, at
5 just £125 -- about \$240 Canadian.

6 Businesses were also asked if collecting and
7 submitting information had affected how their
8 business operates. The majority, 95 percent, said
9 it had no impact at all. In fact, some said the
10 registry's increase in corporate transparency was
11 economically advantageous as it would likely result
12 in improved business confidence and lead to greater
13 investment.

14 Compliance costs are also borne by financial
15 that devote vast resources to activities the
16 government could perform with a registry. A public
17 and centralized registry would bring significant
18 efficiencies across multiple sectors of the
19 economy.

20 The importance of a public registry.
21 Registries should be available to everyone from tax
22 officials and financial institutions to journalists
23 conducting investigations and Canadian businesses
24 doing due diligence checks. Public scrutiny can
25 reduce errors and improve data.

26 A public database of beneficial owners can
27 cut off illicit flows before they reach our borders
28 and create greater global stability. For example,
29 a study by the advocacy group Global Witness found
30 a significant decrease in the UK of a type of
31 corporate arrangement commonly associated with
32 money laundering known as Scottish Limited
33 Partnerships.

34 SLPs do not have to identify associated
35 partners and have been indicated in financial
36 scandals such as fraud or arms dealing. The
37 incorporation of SLPs declined by 80 percent from
38 their peak in 2015, before the UK implemented a
39 public registry.

40 The UK registry helped the public find
41 incorrect information. There were 58,352 reports
42 from the public regarding likely mistakes and
43 discrepancies in the company register between July
44 2017 and March 2018.

45 As other examples of the benefits of a public
46 registry, foreign tax and legal authorities could
47 analyze data to detect inconsistencies across

1 regions, enhancing government collaboration. The
2 UK registry was cross-checked with other regions'
3 public datasets, where discrepancies were found
4 between asset declarations of Ukrainian politicians
5 and officials and the beneficial owners listed in
6 the PSC register.

7 Conclusion. When it comes to beneficial
8 ownership, what you do not know can hurt you.
9 Governments have learned this lesson the hard way,
10 losing billions to money laundering and tax
11 avoidance schemes. Crimes using shell companies
12 leave little in the way of a paper trail,
13 frustrating law enforcement and tax authorities who
14 are already under-resourced.

15 The extent of secrecy granted to companies
16 has come at a high cost to Canadians, particularly
17 in British Columbia. Bad actors have exploited
18 Canada's stable economy, leading to crime, housing
19 unaffordability and increased corruption.

20 The Canadian government has acknowledged the
21 problem and agreed to look at all options to fix
22 it, including a public registry of beneficial
23 ownership. This is a positive step, but it does
24 not go far enough for a G7 country that has fallen
25 behind its peers. Forty-five jurisdictions have
26 already made significant progress implementing a
27 public registry. It is time for Canada to join the
28 global movement towards beneficial ownership
29 transparency.

30 We look forward to staying engaged with the
31 Commission's important work and we hope that the
32 citizens of British Columbia are served well by the
33 Commission's findings and recommendations, and that
34 the Canadian Government and other provinces follow
35 the Commission's work closely.

36 Thank you.

37 THE COMMISSIONER: Thank you, Mr. Cohen. Mr.
38 Martland, I understand that concludes the openings
39 by participants. Is that correct?

40 MR. MARTLAND: It is, yes.

41 THE COMMISSIONER: All right. Thank you. I think I
42 should take a few moments just to thank the
43 participants for their efforts in making the
44 opening statements over the past several days. As
45 I noted in the introductory statement, the
46 Commission's mandate is both broad and deep, and we
47 need the assistance of all levels of government,

1 the public and private agencies, and individual
2 citizens to grapple with the many issues, some of
3 them complex, to achieve a successful outcome for
4 this commission. The participants' efforts in
5 identifying issues, positions and ideas for the
6 Commission to engage with as we move forward and
7 into the evidentiary phase of our hearings, will
8 provide significant assistance.

9 We're very grateful for the participants'
10 willingness to engage, your cooperation and the
11 benefit of your various perspectives as we develop
12 and crystallize our approach towards the
13 challenging and important issues which confront us.

14 As Mr. Martland mentioned at the outset of
15 this hearing, transcripts of these proceedings will
16 be posted on our website once they become
17 available, and the webcast will become available in
18 our website archives.

19 Our venue for the next round of hearings will
20 be posted as soon as it is finalized.

21 Did you have anything you wish to add, Mr.
22 Martland?

23 MR. MARTLAND: No. And just as simply a reminder that
24 we resume May 25th with a block of hearings
25 scheduled until June 26th. Further hearings then
26 start just after Labour Day through the fall.

27 THE COMMISSIONER: Thank you. We will adjourn, then.

28 THE REGISTRAR: All rise. The hearings are adjourned.

29
30 (PROCEEDINGS ADJOURNED TO MAY 25, 2020, AT
31 9:30 A.M.)
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