

PROCEEDINGS AT HEARING OF APRIL 9, 2021

COMMISSIONER AUSTIN F. CULLEN

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April 9, 2021

(Via Videoconference)

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

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

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. Martland.

MR. MARTLAND: Thank you, Mr. Commissioner. Today we have as witnesses a panel of four co-authors of a forward-looking roadmap to deal with money laundering enforcement issues in the province of BC. And the order they're listed first on the front of the report, Dr. Christian Leuprecht, Jeffrey Simser, Garry Clement and Arthur Cockfield are the witnesses who are here today, and having done that, Madam Registrar, I'm in your hands whether you administer oaths and affirmations alphabetically, but if the witnesses could please be sworn and affirmed.

THE REGISTRAR: Would each of you please state your full name and spell your first name and last name for the record. Let's start with Mr. Clement.

THE WITNESS: (GC) Garry Wayne Gordon Clement. Garry with two Rs, Clement, C-l-e-m-e-n-t.

Christian Leuprecht (for the commission)
Garry Clement (for the commission)
Arthur Cockfield (for the commission)
Jeffrey Simser (for the commission)

2

1 THE REGISTRAR: Dr. Cockfield, can you please state
2 your full name and spell your first name and
3 last name for the record.

4 THE WITNESS: (AC) Arthur Cockfield. I'm sorry. I'm
5 hearing an echo over everything, so I'm not sure
6 what's happening. I'm hearing everything twice.
7 I'm not sure why. A-r-t-h-u-r.

8 THE REGISTRAR: And your last name spells ...

9 THE WITNESS: (AC) C-o-c-k-f-i-e-l-d. Yeah, I'm
10 hearing everything twice.

11 THE REGISTRAR: Dr. Leuprecht.

12 THE WITNESS: (CL) Christian Leuprecht,
13 C-h-r-i-s-t-i-a-n L-e-u-p-r-e-c-h-t.

14 THE REGISTRAR: And Mr. Simser.

15 THE WITNESS: (JS) Jeffrey Simser, Jeffrey with an
16 r-e-y, and then S-i-m-s-e-r.

17 **CHRISTIAN LEUPRECHT, a**
18 **witness for the**
19 **commission, sworn.**

20 **GARRY CLEMENT, a witness**
21 **for the commission,**
22 **affirmed.**

23 THE REGISTRAR: And Mr. Cockfield and Mr. Simser.

24 **ARTHUR COCKFIELD, a**
25 **witness for the**

Christian Leuprecht (for the commission)
Garry Clement (for the commission)
Arthur Cockfield (for the commission)
Jeffrey Simser (for the commission)
Discussion re technical issues

3

1 **commission, affirmed.**

2 **JEFFREY SIMSER, a**

3 **witness for the**

4 **commission, affirmed.**

5 THE COMMISSIONER: I think before we proceed,

6 Mr. Martland, we should sort out Dr. Cockfield's

7 difficulties. Perhaps, Ms. Matters, if you

8 could engage with him to see if there's

9 something we can do to avoid him having

10 difficulties in the transmission or reception of

11 the audio feed.

12 MR. MARTLAND: Yes, Mr. Commissioner, maybe we stand

13 down for an indefinite few minutes and we'll

14 simply try to address those issues because I

15 don't think the witness should be in the

16 position of Jimi Hendrix at the Monterey Pop

17 Festival with a feedback echo.

18 THE COMMISSIONER: Thank you for your analogy,

19 Mr. Martland. We'll stand down.

20 THE REGISTRAR: This hearing is stood down. Please

21 mute your mic and turn off your video. Thank

22 you.

23 **(WITNESSES STOOD DOWN)**

24 **(PROCEEDINGS ADJOURNED AT 9:34 A.M.)**

25 **(PROCEEDINGS RECONVENED AT 9:39 A.M.)**

1 there are other co-authors and contributors to
2 this report for whom I'm not introducing CVs or
3 covering that ground in the hearing, but those
4 sketches are included in the first few pages of
5 the report that we'll be spending some time with
6 today.

7 **EXAMINATION BY MR. MARTLAND:**

8 Q I propose to do this alphabetically by the last
9 name of the witnesses. So I'll start, please,
10 with Mr. Clement. And, Madam Registrar, if you
11 could please display the biography for
12 Mr. Clement.

13 And we have a visual aid of a photograph
14 there, Mr. Clement, but you'll confirm this is
15 your biography; is that right? And I think each
16 of you as you speak will need to unmute because
17 you have been remuted.

18 A (GC) There we go. Yes, that is correct.

19 MR. MARTLAND: Mr. Commissioner, if that might be
20 marked as the next exhibit, please.

21 THE COMMISSIONER: Very well, that will be 825.

22 THE REGISTRAR: Exhibit 825.

23 **EXHIBIT 825: Curriculum Vitae of Garry W.G.**
24 **Clement**

25 MR. MARTLAND:

1 Q Mr. Clement, you've worked in the field of
2 anti-money laundering since 1983, were heavily
3 involved in the early days of the RCMP's
4 proceeds of crime program and for some period of
5 some 34 years you've had a law enforcement
6 perspective which was government and
7 investigative driven and in particularly the
8 last 13 years a perspective that's also been
9 industry and compliance driven; is that a fair
10 description?

11 A (GC) That's fair, thank you very much. Yes,
12 that is correct.

13 Q By way of some of your background but only some
14 of it, you served as a liaison officer in Hong
15 Kong in the period of 1991 through 1994 and were
16 on the ground with respect to the RCMP's days
17 establishing the proceeds of crime program,
18 ultimately retiring after 30 years of service
19 eventually as the national director. Do I have
20 that right?

21 A (GC) That is correct, yes.

22 Q You've published a number of books, provided
23 training to law enforcement as well as the
24 financial sector, prosecutors, government
25 leaders in a host of jurisdictions, including

Christian Leuprecht (for the commission)
Garry Clement (for the commission)
Arthur Cockfield (for the commission)
Jeffrey Simser (for the commission)
Exam by Mr. Martland

7

1 every province in this country, Hong Kong,
2 Ireland, Panama, Colombia, the UK, Jamaica,
3 Antigua and the US; is that right?

4 A (GC) That is correct, yes.

5 Q Thank you. I'll next turn please to
6 Dr. Cockfield. Madam Registrar, if could you
7 please display the witness's CV.

8 Dr. Cockfield, do you recognize that to be
9 your CV?

10 A (AC) Yes, I do.

11 MR. MARTLAND: Mr. Commissioner, if that could please
12 become exhibit 826.

13 THE COMMISSIONER: Very well, 826.

14 THE REGISTRAR: Exhibit 826.

15 **EXHIBIT 826: Curriculum Vitae of Dr. Arthur**
16 **John Cockfield**

17 MR. MARTLAND:

18 Q Dr. Cockfield, by way of background, you have
19 degrees from the Western Ivy School of Business,
20 a law degree from Queen's University, both
21 masters and doctorates from Stanford University
22 and presently you are a professor at Queen's
23 University Faculty of Law where you've been
24 appointed as a Queen's National Scholar; is that
25 right?

1 A (AC) Yes.

2 Q The focus of much of your work has been on tax
3 law in particular; is that right?

4 A (AC) Yes.

5 Q You've been the recipient of a number of
6 fellowships, external research grants and awards
7 for a number of areas of your work in particular
8 on tax research. You have served as a legal
9 consultant to a number of organizations,
10 including the OECD, the United Nations, the
11 World Bank, Department of Justice, Department of
12 Finance, Canada Revenue Agency, the Office of
13 the Auditor General and the Office of the
14 Privacy Commissioner of Canada?

15 A (AC) Yes.

16 Q Thank you. Next if I might please ask for
17 Dr. Leuprecht's CV to be displayed, Madam
18 Registrar.

19 Dr. Leuprecht, do you recognize that to your
20 CV?

21 A (CL) I do indeed.

22 MR. MARTLAND: If that could please be marked as
23 exhibit 827, Mr. Commissioner.

24 THE COMMISSIONER: Yes, very well, 827.

25 THE REGISTRAR: Exhibit 827.

1 **EXHIBIT 827: Curriculum Vitae of Dr. Christian**
2 **Leuprecht**

3 MR. MARTLAND:

4 Q I notice that you have a backdrop that I think
5 has crests for both RMC and Queen's. So I
6 suppose if we could add the Toucan Pub we'd have
7 all of Kingston covered.

8 You served as the class of 1965 professor in
9 leadership, department of the political science
10 and economics at RMC, the Royal Military College
11 in Kingston?

12 A (CL) That's correct.

13 Q And likewise as Director with the Institute of
14 Intergovernmental Relations at the school of
15 policy studies at Queen's University with a
16 cross appointment to the department of political
17 studies at Queen's?

18 A (CL) Correct.

19 Q And we see a list of your degrees right there on
20 display. A PhD from Queen's, Masters of Arts,
21 indeed two Masters of Arts that we see from the
22 University of Toronto. A degree from the
23 Université de Grenoble in France and then a
24 University of Toronto undergraduate degree. Is
25 that accurate?

1 A (CL) C'est exact. That's right.

2 Q You also hold the position of adjunct research
3 professor with the Australian Graduate School of
4 Policing and Security, Charles Sturt University?

5 A (CL) Correct.

6 Q And positions with the Flinders University, a
7 senior fellow as well at MacDonald-Laurier
8 Institute?

9 A (CL) Correct.

10 Q You're an elected member of the College of New
11 Scholars of the Royal Society of Canada and a
12 former Fulbright research chair?

13 A (CL) Correct.

14 Q And among other areas your expertise includes
15 security and defence, political demography
16 compared to federalism and multilevel
17 governance?

18 A (CL) Indeed.

19 Q And your CV, and I won't go through it, but it
20 lists numerous publications, some 14 books and
21 many articles?

22 A (CL) Correct.

23 Q Thank you. I'll turn next to Mr. Simser. And
24 Madam Registrar, we'll see here this document is
25 exhibit 377.

1 Mr. Simser, you attended and testified in
2 the course of hearings addressing asset
3 forfeiture on December 14 of 2020?

4 A (JS) That's correct.

5 Q You recognize what we see here as being your CV
6 which was marked at that point?

7 A (JS) Yes, I do.

8 Q You have been a lawyer with the Ontario Public
9 Service since 1992. You were the founding legal
10 director of Ontario Civil Remedies for Illicit
11 Activities and created and led Canada's first
12 civil forfeiture litigation and asset management
13 team in Ontario; is that right?

14 A (JS) That's correct.

15 Q You've been heavily involved in the policy,
16 financial and legislative drafting development
17 for two different statutes, the *Civil Remedies*
18 *Act (2001)* and the *Prohibiting Profiting From*
19 *the Recounting of Crimes Act (2002)*?

20 A (JS) That's correct.

21 Q And in addition you've supported a number of
22 other jurisdictions in their development of
23 civil forfeiture laws that includes a number of
24 provinces, including BC, Alberta, Manitoba
25 Quebec and New Brunswick?

1 A (JS) That's correct.

2 Q You have published two legal text works and
3 dozens of legal articles, and as we see on
4 display there, you hold law degrees from Osgoode
5 Hall, a masters from Osgoode at York University,
6 as well as a law degree from Queen's and a BA
7 from the University of Toronto?

8 A (JS) That's correct.

9 Q One point that I should, I suppose, put on
10 record, it was made when my colleague
11 Mr. McCleery led your evidence in December, to
12 repeat what he said then, you appear today in
13 your capacity as an individual and you're not
14 appearing on behalf of the government of
15 Ontario. Your evidence isn't intended to
16 represent positions or views of the government
17 of Ontario?

18 A (JS) That's correct. I'm using vacation and
19 leave time both to prepare the materials that
20 you have before you as well as to testify today.

21 Q And we do thank you for that. And we'll add we
22 certainly appreciate how much time you've
23 dedicated to our project and we're grateful for
24 that, sir.

25 A You're welcome.

1 Q Thank you. Madam Registrar, if we could next
2 please display the first page of the report.
3 I'm simply use that as shorthand for this paper
4 that we have on screen, "Detect, Disrupt and
5 Deter: Domestic and Global Financial Crime – A
6 Roadmap For British Columbia." Dr. Leuprecht,
7 you're the lead author on this or at least the
8 first listed, and if I might confirm this is the
9 report that you and your co-authors have
10 prepared for the commission?

11 A (CL) Indeed.

12 MR. MARTLAND: I'll ask, please, Mr. Commissioner,
13 that this be marked as exhibit -- I think it's
14 828.

15 THE COMMISSIONER: Yes. Very well. It will be
16 marked as exhibit 828.

17 THE REGISTRAR: Exhibit 828.

18 **EXHIBIT 828: Collaborative Report, Detect,**
19 **Disrupt and Deter: Domestic and Global**
20 **Financial Crime – A Roadmap for British**
21 **Columbia – March 2021**

22 MR. MARTLAND:

23 Q And, Madam Registrar, for present purposes I
24 don't think I need this on display, but in short
25 order I'll have it back up to refer to some

1 portions, please, for much of today's hearing I
2 expect, but for now we can take it down, please.

3 And, Dr. Leuprecht, I'll start if I might
4 with you, if you could please in a shorthand way
5 give us an understanding of how you came to
6 prepare this paper, what the assignment was, if
7 you will, what the timeline was and then how you
8 engaged colleagues to help do the work for this
9 paper.

10 A (CL) So in many ways it's what the commission
11 has been doing so well is overcoming the fallacy
12 of composition, that there's lots of people who
13 hold their little piece to this puzzle but then
14 trying to put it together in a way that's
15 actually useful for practitioners, for decision
16 makers, for policymakers. And also to demystify
17 this somewhat for the public because it seems
18 like such a vexing problem that people just
19 throw up their hands and so they walk away. And
20 so part of the this show this is actually
21 possible. There are ways to put this together
22 and that there are other jurisdiction models
23 that we'll discuss in a moment that have yielded
24 considerable success. And so there's some
25 comparative learning also that we can do here.

1 Part of why it's such a vexing problem is that
2 is it has so many different dimensions to it.
3 It has a social science dimension, policy
4 dimensions, technological dimensions,
5 investigative and enforcement dimensions, very
6 complex legal dimensions to ensure that it
7 complies with our constitutional and charter
8 obligations, and so this way we put together a
9 team of individuals who each have literally
10 decades, as you pointed out at the beginning, of
11 experience in this particular field. And
12 unfortunately there are not a lot of people in
13 this county that work on this, but part of our
14 hope is this will inspire more people to do work
15 in this field. So I mentioned some of the
16 successful models from other jurisdictions. We
17 have successful integrated models in Canada when
18 it comes, for instance, to terrorism. So part
19 of this is to demonstrate this is amply doable;
20 it's just a matter of how we orchestrate this.
21 And so that's why we call this a roadmap to lay
22 out how it can be done. We're also motivated, I
23 think, by drawing attention to the deleterious
24 consequences of money laundering. People, I
25 think, often write it off as sort of, you know,

1 it's just an ill that we all need to -- social
2 ill that we need to live with. But A, we don't
3 need to live it with and B, it has serious
4 consequences. It has consequences for community
5 safety. It has consequences for public safety.
6 It has consequences for the housing prices and
7 the escalated costs that are involved here for
8 individuals. It has consequence for Canada's
9 international obligations. It has consequences
10 for lost tax revenue, which of course in this
11 day and age is quite critical. We estimate
12 there's some between 43 billion and 147 billion
13 of revenue annually in Canada that is lost to
14 money laundering and other forms of illicit
15 gains that are not currently being taxed. And
16 we also wanted to show that this entity can be
17 self-funding. And there are other precedents,
18 for instance from Quebec where we have in other
19 areas of crime models where this doesn't need to
20 be a net cost to the taxpayer. In fact this can
21 actually be a net gain. So the report itself
22 quickly lays out the policy challenges, some
23 ways to address them. It quickly walks the
24 reader through some of the constitutional
25 institutional framework in which this all

1 transpires, the many silos of departments
2 agencies and entities that need to work together
3 in order to make this happen, and we then
4 propose an entity called the Anti-Money
5 Laundering Institute to remedy as the key sort
6 of institutional remedy and that institute we
7 propose has two different parts. One is what we
8 call a Fusion Centre. The other one is an
9 integrated enforcement team. It's important to
10 keep these two separate to ensure the
11 independence of the investigatory and
12 prosecutorial functions.

13 The Fusion Centre would primarily look after
14 regulatory flows. On the intelligence side it
15 provides a technological centre of excellence.
16 This is necessary both because you need largely
17 a data analytics capacity, but you also need --
18 and it would provide other support, for instance
19 forensic accounting and asset management, and
20 open source intelligence, infusion for
21 information for regulators in training, which is
22 a major issue in this area as we will I'm sure
23 be discussing shortly. And suspicious and --
24 review reports and it brings together other
25 policy actors and private actors. So that's the

1 Fusion Centre.

2 And the integrated enforcement side would
3 bring together the investigations on
4 prosecutions. The assets issue on the criminal
5 side, the civil forfeiture component as well as
6 some of the other key players in the
7 investigatory and prosecutorial side which is
8 Canada Revenue Agency, the BC Securities
9 Commissions and several others.

10 And we also close out with recognizing that
11 while the commission is primarily focused on
12 provincial jurisdiction, we make several
13 recommendation as to how the province can
14 improve work with the federal government to try
15 to improve the interface between the provincial
16 jurisdiction and federal components to ensure
17 most efficient and effective outcomes. The
18 report has three appendices. One has statistics
19 on money laundering and the other two relate to
20 successful models from other jurisdictions both
21 from Ontario on Quebec as well as from other
22 partner jurisdictions, in particular the United
23 Kingdom, Australia and Ireland.

24 And if I may I will hand to Jeff Simser, who
25 will quickly walk through some of those key

1 observations.

2 Q Well, that's incredibly useful to situate this.
3 Just before we turn to Mr. Simser for that
4 portion of evidence, what I'd like to do is have
5 our registrar please bring up page 4 of the
6 report and display that. That should show on
7 your screen in a moment. I see a few of you
8 reaching for binders like I have.

9 What we see here, Dr. Leuprecht, just to
10 follow up on what you described and just make it
11 abundantly plain, you've described that this --
12 I think I use the word "forward-looking," but
13 it's termed a roadmap and what is sets out is
14 the proposal for -- we see in the second bullet
15 point there at the top of the page the AMLI, the
16 Anti-Money Laundering Institute, and then just
17 so I have it clearly structured in my mind what
18 you've described is that within the AMLI there
19 would be two components, the Fusion Centre and
20 IET or integrated enforcement team. Those are
21 discussed a little bit at the bullet above as
22 well as in considerable detail in the report.
23 Do I have that described accurately in terms of
24 the structure of the proposed entity?

25 A (CL) That is correct. It brings us to the title

1 of the report which is "Detect, Disrupt and
2 Deter" and so that entity is intended to achieve
3 those three particular aims.

4 Q That's very useful. If I might suggest, if it
5 makes some sense why don't I try it this way,
6 let's go please, Madam Registrar, to page 31 of
7 the report. And in this section of the report
8 we have a heading of "Other Jurisdictional
9 Models" that addresses some of what are termed
10 there in the first sentence as being remedial
11 techniques and drawing on other jurisdictions.
12 So maybe I'll turn then to Mr. Simser and ask if
13 you might, please, address some of those
14 techniques and also describe some of the
15 successful models that may be informative for
16 this province and as we go through that if it's
17 useful to switch pages, et cetera, please feel
18 free to ask our registrar to do that on display
19 on the document. Thank you.

20 A (JS) Sure. So there's effectively two baskets
21 within this appendix. The first talks about
22 remedial devices, and I know the commission has
23 heard a fair bit already about civil forfeiture.
24 You'll see if you look at the report itself we
25 also talk about *RICO* or the *Racketeer Influenced*

1 *Corrupt Organization* statute. It was passed by
2 the US congress in 1970, and it isn't without
3 precedent in Canada. There are actually two
4 ways in which we have things that are at least
5 analogous to *RICO*. One is under the *Criminal*
6 *Code* section 467.11, the criminal organization
7 offence, it's not the same as *RICO*, but it is
8 the same idea in terms of charging a criminal
9 organization and seeking penal liability for
10 what they do. The other thing that I don't
11 think I spoke particularly about last December,
12 about Ontario *Civil Remedies Act*, is there
13 actually is a part that is directly an
14 antecedent of *RICO* and it allows the attorney
15 general to bring proceedings either to seek
16 injunctive relief, disgorgement or damages from
17 an unlawful conspiracy that's out to harm the
18 public. Those are two of the three aspects.
19 I'm sure during the course of the hearing today
20 we'll hear more about *RICO*, but those are two of
21 the three aspects of *RICO*. The third that we're
22 not recommending in this paper is when *RICO* was
23 passed congress gave the power to individual
24 private litigants to use *RICO*. I think there
25 was an idealistic notion at the time that there

1 would be private attorneys general running
2 around suing the mob, and it didn't work out
3 that way. Plaintiff's lawyers availed
4 themselves of the *RICO* provisions in cases that
5 had virtually nothing to do with organized
6 crime, and so that's not something we're
7 particularly recommending.

8 I think the other thing we'll probably -- I
9 know the commission has already heard a fair bit
10 about are unexplained wealth orders and there's
11 a bullet in the middle there that talk about
12 both the Australia and the British models. If I
13 were to draw a very short thumbnail sketch of
14 what that really is it's an extraordinary remedy
15 that's really an information gathering remedy.
16 There already are forfeiture proceedings, but in
17 certain kinds of cases where there are minimum
18 thresholds met or certain kinds of actors, so in
19 the you UK that would be a politically exposed
20 person or a head of an international
21 organization, those provisions then apply where
22 the court can compel a respondent to come in and
23 explain the provenance of their property. And
24 we'll talk I think during the course of the
25 proceeding about some of the cases that have

1 happened there.

2 This page also notes something called a
3 pecuniary penalty order. This is a type of
4 civil order that's analogous to fine in lieu of
5 forfeiture under the *Criminal Code*. So a fine
6 in lieu of forfeiture works where the defendant
7 or the accused has moved assets beyond the reach
8 of law enforcement but law enforcement can prove
9 in a prosecution that they have earned money
10 through their unlawful activity, the court can
11 then impose a fine and if the fine isn't paid
12 there will be penal sanctions. Similarly in
13 some civil forfeiture regimes, the focus is less
14 on the provenance of the property and more on
15 the activity itself and the court then draw an
16 inference and say this particular activity had
17 this kind of either an earning or a cost and
18 then they can issue an order that then could be
19 attached to any of the property that the
20 defendant has. And the final thing that we've
21 noted just in here is there are some provisions
22 like in Western Australia that are deeming
23 provisions that are I will say exceptionally
24 harsh.

25 So if someone is convicted of serious drug

1 trafficking all of the property that they own
2 and all of the property that they've ever given
3 away is deemed to be a proceed. We're not
4 necessarily recommending that, but I thought it
5 would be useful for the commission just to put
6 the range of things. If we want to go to the
7 next page.

8 Q Maybe I can just interject to ask you a question
9 to pick up. When you described the fine in lieu
10 of forfeiture model is that -- is the concept
11 there essentially that the fine replicates or
12 equates to what would have happened had there
13 been assets that were seizable, that were
14 recovered in that course but really where the
15 assets had been moved or sold or what have you
16 the fine stands in place of what would have been
17 there through asset recovery? Is that the basic
18 concept?

19 A (JS) That's right. If a bad guy has moved
20 a million dollars offshore and law enforcement
21 are simply not able to track down where that's
22 gotten to, that's exactly what a fine in lieu of
23 forfeiture does. That's in the context of the
24 prosecution, not a civil case. But yeah, that's
25 exactly how that works.

1 Q Thank you. And why don't we go to the next
2 page, page 32.

3 A (JS) Sure. So I'm not going to spend too much
4 time on page 32, but there are a number of
5 models and what I would observe to the
6 commission is that all of them have come out of
7 a political or historic sort of experience that
8 is true to whatever jurisdiction the model comes
9 from. So the New South Wales Crime Commission,
10 for example, really was built originally to deal
11 with drug trafficking, which was a serious
12 problem in New South Wales. It has since grown
13 to pick up other kinds of crime. There's five
14 divisions, the most important of which are the
15 criminal investigation division and the
16 financial investigation division. And if we go
17 to the next page.

18 Q Maybe I can just pause. I'm sorry. I
19 appreciate your speed. That's generally a fine
20 thing, but there's certainly one thing I was
21 hoping to pick up on because I think this will
22 recur, maybe echo, hopefully not for
23 Dr. Cockfield but echo for us as we pick up on
24 discussion about the AMLI. So on page 32 in the
25 discussion of the New South Wales Crime

1 Commission. I just thought I'd sort of hover on
2 this point. What's described, and the paper
3 here has this in more detail obviously than
4 we'll be able to do today, first the criminal
5 investigations division, or CID, assisting law
6 enforcement agencies on specialized tasks,
7 et cetera. Point 2, the FID, the financial
8 investigations division, employing forensic
9 accountants, financial analysts, et cetera.
10 Then I see a few lines down under point 2
11 there's a sentence that says there are firewalls
12 to ensure a proper separation of roles. But I
13 thought I would just pause on that and maybe you
14 can comment on that business about separating
15 roles, firewalls, here described in the context
16 of the New South Wales Crime Commission, is that
17 something relevant in your view to BC?

18 A (JS) Yeah, it is. I think, you know, you have
19 to -- there are cases I think from 2002 *Jarvis*
20 and *Ling* and what those two cases talk about is
21 when a government body is moving from an
22 inspection or an -- inspection sort of capacity,
23 a regulatory capacity, into an investigation
24 that might have penal consequences you need to
25 make sure you firewall the two functions because

1 they want, for example, a tax inspector to be
2 able to look at books and all that kind of
3 stuff, but once it's veering towards a criminal
4 investigation, potentially a prosecution,
5 potentially a civil forfeiture case, then you
6 want to wall that out so that the two and then
7 you'll have transmittal modalities to make sure
8 that what can be transmitted is then useable
9 later in the court.

10 So this is really part of the model, the
11 AMLI model that this group of experts has
12 proposed, is you can separate functions between
13 analysts and people that are on the regulatory
14 side and doing the workup of the case,
15 supporting asset management, supporting forensic
16 accounting from the ones that are actually in
17 more of an enforcement mode. And the other
18 issue in there is, for example, a prosecutor,
19 whether they are a federal prosecutor or a
20 provincial prosecutor, by law, by rule of law
21 they have to have a strict independence of
22 decision making as to whether to bring a case
23 forward or not. I think my colleague Garry will
24 probably smile and tell you of cases where the
25 police really wanted it to go forward and the

1 prosecutor took the decision that there was no
2 reasonable prospect of conviction. So you need
3 to also be very respectful of those kinds of
4 roles of independence that work within. So this
5 is analogous to what we have proposed in this
6 paper.

7 Q That's very useful. Why don't we turn to
8 page 33. You then take us from Australia to
9 Ireland and the UK in the headings that we see
10 there.

11 A (JS) Right. I know that the commission has
12 heard some expert evidence on Ireland. It's a
13 really stark reminder of how a political event
14 can affect what a government does in reaction to
15 it. So the Criminal Assets Bureau was created
16 very, very quickly in I believe it was 1996, and
17 what happened was a reporter Veronica Guerin,
18 subject of a major motion picture as well, had
19 been following a mobster named John Gilligan who
20 ultimately had her murdered, and in the outrage
21 that followed they created both a civil
22 forfeiture law and the Criminal Assets Bureau
23 and there were really three main tasks for that
24 bureau. One is proceeds of crime. The second
25 is that revenue commissioners for taxation are

1 part of it. And the third is that they found a
2 lot of I'll say bad guys or bad actors who are
3 also claiming welfare at the same time that they
4 were making money from things like drugs. So
5 they put those three functions together within
6 the bureau. It stands alone from the Garda,
7 from the police. It has some independence,
8 there's legal officers, and then they bring, for
9 example, a civil forfeiture proceeding in the
10 courts in Dublin.

11 Q Carry on.

12 A (JS) So then I've just noted a couple of other
13 models for you. The National Crime Agency.
14 It's had a number of different antecedents. I
15 know that the commission has heard expert
16 witnesses from the NCA or talking about NCA.
17 And the last one that we put in there, I
18 believe, Stefan Cassella, a friend of mine and a
19 good expert, has also spoken to the US
20 Department of Justice model. MLARS. Most of
21 that asset forfeiture, both civil and criminal,
22 vest in the office of an assistant US attorney
23 that is regionally distributed, but there is a
24 central office and they do [indiscernible] when
25 cases cross state lines or jurisdictional lines

1 or when there's an international dimension to
2 the case. So that's not a fulsome model because
3 that's really only US justice prosecutors and
4 civil forfeiture lawyers, but we've included
5 that as well. So that's abasically appendix 1.

6 Q That's very useful. And having started with
7 appendix 1 to really take a view from a high
8 level and have the context of some of these
9 international models or processes that are used
10 I wonder if we could go back now please, Madam
11 Registrar, to page 4 and my hope here is to
12 march in a fairly linear way through I suppose
13 to about page 4 through to page 30 just
14 sequentially.

15 So on page 4 and we previously displayed
16 this. Dr. Leuprecht, I asked you just in
17 confirming the outline of what this report
18 recommends and what the AMLI or Anti-Money
19 Laundering Institute, how that would be
20 structured. If we go over to page 5 I take in
21 the first part of that page, Dr. Leuprecht,
22 that's really an executive summary or summary of
23 the points described in greater detail in the
24 paper.

25 A (CL) Correct. It lays out the functions that

1 need to be performed and how you operationalize
2 those particular functions in a legal and
3 constitutional fashion.

4 Q That's great. And so I won't rely on this.
5 I'll rather rely on the body of the report for
6 it. Let me turn to the turn to the heading that
7 we see on display there, the policy challenges
8 posed by money laundering, and, Dr. Cockfield,
9 why don't I turn to you, if you might help us
10 understand what are some of the key policy
11 challenges with money laundering that you'd
12 identify for the commission?

13 A (AC) There's a very brief summary of some of
14 these policies challenges, but the basic idea is
15 this is a very tough crime to investigate and
16 prosecute money laundering primarily because at
17 least in many circumstances criminals take steps
18 to hide the money trail. And so, you know, one
19 common practice we've seen in BC is to move some
20 of the money offshore via, you know, offshore
21 corporations, and so that clearly poses a great
22 challenge to Canadian investigators at the point
23 where the money leaves Canada and, you know,
24 maybe invest it in Deutschmarks in Germany but
25 held via a bank in let's say the Cayman Islands.

1 We can talk later about some of the steps that
2 Canada is engaged in to try to address that
3 challenge, but just one example of how criminals
4 try to anonymize and obfuscate the money trail
5 so that it's very difficult for investigators to
6 trace.

7 Q And we see in the bullets that are listed there
8 at the bottom of the page a number of these
9 items are identified in some further detail.
10 Why don't we move over to the next page under
11 the subheading of 3.1 "Moving Value: Finding
12 Links in the Chain." Dr. Cockfield, why don't I
13 stay with you to help us understand what is this
14 concept of the links in the chain or ways that
15 the link in the chain might be broken or
16 disconnected.

17 A (AC) Well, again the goal of much money
18 laundering is to kind of hide the money trail
19 and so one obvious way that the criminals do
20 this is through simply through the use of cash,
21 which is really the most anonymous form of
22 currency and more anonymous than the second
23 point, cryptocurrencies, which we consider to be
24 pseudoanonymous. Later in the report we, for
25 instance, mentioned that the CRA just last month

1 obtained a federal court order to access, I
2 think, Coinsquare cryptocurrency brokers, a
3 number of their different transactions and
4 users. And so criminals of course are aware of
5 this. They're aware that money that's
6 transferred from hand to hand doesn't leave any
7 electronic records, it's hard to trace, so they
8 are more apt to use actual cash, and we talk
9 about maybe lessening the use of cash within the
10 overall economy. Cryptocurrencies and the dark
11 web appear to be increasingly embraced by
12 criminals. And then finally as I mentioned,
13 often the money is moved offshore, which makes
14 it particularly difficult for Canadian
15 investigators and for law enforcement and tax
16 authorities to trace the funds.

17 Q There's one point I'd like to pick up on from
18 that first paragraph on display. About five or
19 six lines down there's a sentence and I'll read
20 it out. It says:

21 "There's a fundamental asymmetry between
22 criminals and law enforcement because
23 adding more complexity to the chain is
24 relatively easy for criminals but
25 disproportionately increases the effort to

1 follow the chain for law enforcement."

2 I'm tempted, Mr. Clement, to turn to you to
3 comment on the law enforcement portion. You're
4 free to kick the ball over to a colleague if you
5 would prefer, but I would like to have some
6 expansion of what that's describing, please.

7 A (GC) Yeah, what I'd like to do is put an actual
8 real example as one that has long gone through
9 the courts. But I think it puts into
10 perspective what we're talking about, and this
11 was a case back in the 1980s. It involved a
12 lawyer by the name of Donovan Blakeman and he
13 was an international money laundering criminal
14 organization, and between '82 and '87 it's
15 estimated that 100 million was managed by
16 Blakeman and he established 11 shell companies
17 in the Channel Islands, 15 other companies from
18 Liberia, the Virgin Islands, Cayman Islands,
19 Netherlands Antilles and other jurisdictions,
20 real estate in West Palm Beach, Florida,
21 Kitchener, Ontario and Barrie, Ontario. That is
22 what you're looking at when you look at
23 organized crime and transnational organized
24 crime. You're dealing with an extreme
25 sophistication where organized criminals rely on

1 gatekeepers. So when you see a major case
2 that -- and this is some of what I know has gone
3 before the commission already. When you look at
4 some of the flows of money that came out of
5 China, et cetera, this is what you're dealing
6 with. And so from an investigative standpoint
7 it's having to go back and follow those trails
8 and each one of those jurisdictions, as I think
9 as you can well appreciate, they are sovereign
10 jurisdictions, so everything from MLATs and that
11 is kicked in. And when you look at it from a
12 Canadian point of view -- and that's why when we
13 talked about how to set up this AMLI, it's
14 really fundamental that you've got this
15 phenomenal ability to generate intelligence that
16 can help uncover that before the investigation
17 starts. Or as much of it as possible. So
18 that's really what you're confronted with when
19 you talk today about organized crime and
20 transnational organized crime.

21 Q And I take it just as those are challenges for
22 law enforcement from the point of view of the
23 sophisticated money launderer those are
24 opportunities to really deliberately exploit
25 movements of funds, transactions, borders, what

1 have you, to really cover up one's tracks by
2 virtue of the movement and activity. Is that
3 one way to put it?

4 A (GC) It's a good way to put it. The reality is,
5 and I can use having done an organized crime
6 investigation in '96, and it was the operator
7 that tied actually back into the Genovese crime
8 family. They have all of the resources at their
9 disposal. They have and rely heavily on
10 gatekeepers, but they don't look at borders as
11 we have to. There's no sovereign jurisdiction
12 in their mind, so basically they look at the
13 world as a highway to capitalize on to move
14 their ill-gotten gains around to try and
15 legitimize themselves, and I think that's really
16 what puts it into perspective why this is so
17 difficult.

18 (JS) If I could just add to that. So they
19 also have the resources to hire really good
20 lawyers and so, for example, there are some
21 jurisdictions in the Caribbean that allow what's
22 called a peekaboo trust. There's a trust that's
23 set up and if Garry is chasing he might find the
24 money go into the trust, but under the terms of
25 the trust the minute that there's a demand made

1 on account information or anything else, the
2 money is then flown immediately and wired to
3 another jurisdiction. And so for the problem
4 then that a policeman or a prosecutor or lawyer
5 will have in Canada is you'll spend all this
6 time fighting to get information and when you
7 finally get it you find out that the money has
8 then transited to Panama or somewhere else and
9 it's then put beyond your reach.

10 Q That's fascinating. So you're describing this
11 as sort of the culprit went to the washroom and
12 escaped out the window. Effectively the police
13 or the enforcement authorities have traced to
14 where the asset may be, but it immediately
15 moves. Dr. Cockfield?

16 A (AC) This is a common technique. I call them
17 trust transfer clauses. There's I think a 1990
18 case 9th Circuit *Anderson v. Federal Trade*
19 *Commission* in the United States and how the
20 Americans deal with it they hold the accused in
21 contempt of court. So when you put the accused
22 on trial, you say please show you the money, and
23 the accused says well, here is my asset
24 protection trust, look at the clause; I don't
25 know where the money is; as soon as you start

1 litigating against me the clause had to send
2 that off to some other anonymous bank account.
3 And then the judge said, and it was upheld by
4 the 9th Circuit, well, I don't believe you that
5 you don't know where the money comes from and
6 until you figure things out you're going to
7 jail. So that's how -- Canada to my knowledge
8 has not done that. But that's how the Americans
9 deal with it.

10 Q That's very useful. Let me turn, please, to
11 page 7 of the report and I'll just pick up on a
12 few points that are discovered there. We see in
13 the first full paragraph that's there:

14 "Other links are detectible in principle
15 but extremely difficult to detect in
16 practice."

17 I'd welcome comment on what that describes,
18 please. There's reference there to fine art,
19 jewellery, paintings, et cetera, and the concept
20 they may have little value in transit but have
21 large value once transited or moved to their
22 destination.

23 A (GC) I'll jump in on this and essentially on
24 that point what we're making and I can tell you
25 in just about every investigation that I was

1 involved in or had my units investigate, we came
2 across all kinds of safety deposit boxes full of
3 high value jewellery, Rolex watches, not so much
4 of interest today, but they were quite popular
5 in the 80s and 90s. We all know that paintings
6 from renowned artists are worth tremendous
7 amount of money, but it's an area that has not
8 really been -- high valued goods hasn't been
9 something that Canada in the past has looked at,
10 and yet it's a great investment because we've
11 gone into lots of fairly sophisticated criminals
12 and found their house full of art. So it was a
13 great way to launder money and at that time, and
14 still for the most part a lot of these high-end
15 jewellers have not had to report. So it's one
16 of those things that, you know, it's a vehicle
17 for money laundering very much like the high-end
18 car industry was. And so what we had to look at
19 and we've looked at for years is that, you know,
20 anything that can generate hide your cash, a
21 vehicle to hide your cash, definitely is used by
22 sophisticated criminals, and I think it's an
23 area that we are tightening up in some areas in
24 Canada, but it's an area that we really need to
25 take a serious look at, whether it's done

1 provincially or otherwise. My view is, and I
2 started a program in the 90s out of Ottawa
3 called Merchants Against Money Laundering, and I
4 really believe that all merchants need to get on
5 side here. It's both a moral and ethical
6 responsibility because we are sadly losing the
7 fight in this arena.

8 Q What I'd like to do is while we have this
9 page on display, third full paragraph, I'll read
10 a sentence again -- this is I guess my standard
11 move -- and then ask Dr. Cockfield and maybe
12 Dr. Leuprecht to comment and expand on it. The
13 reference is this. You'll see in that third
14 full paragraph this:

15 "There is a structural problem in the
16 relationship between financial
17 institutions and financial intelligence
18 units such as [in this country] FINTRAC."

19 What I'd be grateful for is if you help us
20 understand what is that structural problem
21 what's being described. Dr. Cockfield.

22 A (AC) I'll let Christian follow up in a moment,
23 but essentially our view is that FINTRAC as
24 presently constituted is overly passive. So
25 Christian and I have gone to Ottawa and spent

1 some time talking to them about different
2 projects, and they've made great progress with
3 some projects mentioned in our report like
4 Project Protect where FINTRAC linked with the
5 big banks in Canada and they traced funds that
6 ultimately led to the investigation and arrest
7 of sex traffickers. So they're doing good work,
8 but essentially they take in a lot of
9 information. Some of it's not that useful,
10 Suspicious Transaction Reports. We would prefer
11 Suspicious Activity Reports. We can talk about
12 that. So they take it all in, but they don't
13 necessarily turn it into operationalized
14 intelligence for law enforcement. And so we
15 would like to see a reformed role for FINTRAC.

16 (CL) If I can complement Art's comments on
17 this and I'll tie together your last -- the last
18 three observations. The criminals, they exploit
19 market of opportunities; right? So they see
20 borders and these different jurisdictions create
21 different opportunities by way of different
22 types of legislation. So launderers will
23 optimize among those legislations those
24 different jurisdictions to exploit those, the
25 asymmetries those created. They have the full

1 view of the picture of where things are and how
2 things are moving. But states have a very --
3 you know, we work within a 19th century and some
4 Westphalian state model where really the only
5 perspective that we have is that of the
6 sovereign state/jurisdiction and within those
7 jurisdictions we then create intelligence units
8 such as, for instance, the financial
9 intelligence units that have sort of sprung up
10 over the last 20 years, and those units usually
11 only have a purview within their particular
12 jurisdiction. So the bad guys are really good
13 at making everything within that jurisdiction
14 look legal and then only if you can see the full
15 picture you realize that the activity and the
16 conduct is suspicious type conduct. What we've
17 done in Canada is we've taken the institution
18 that we've created and on top of that hamstrung
19 it in its ability to actually provide
20 actionable, useful intelligence to enforcement
21 and investigative agencies. So we have a very
22 good entity that is very good at watching things
23 and observing things, but there's relatively
24 little that it can actually do with what is
25 provided. That's partially related to the

1 structure that it has. It's partially related
2 to the information that it gets because to some
3 extent its samples on the dependent variable.
4 It only gets those transactions that are either
5 past a certain threshold or that fall within a
6 suspicious transaction, so that means you have
7 all the ones, but you don't have the zeros and
8 the zeros provide you with the large baseline
9 against which you can then try to measure the
10 ones. Other jurisdictions have gone different
11 routes. For instance, there's jurisdictions
12 that have dropped the threshold that we
13 currently have in Canada for \$10,000 of moving
14 money on or offshore. They have dropped that
15 down to zero. And so the banks, for instance,
16 in main cases favour that because it means they
17 don't have to invest efforts in trying to sift
18 through different types of transactions. So we
19 have created barriers that make FINTRAC our
20 financial intelligence team less effective than
21 it could be and we've also created artificial
22 barriers in term of the reporting that means
23 that FINTRAC itself doesn't have the purview
24 that it could have in terms of identifying the
25 suspicious transactions and connections among

1 those transactions and so if we can connect the
2 dots within our own jurisdiction it's going to
3 be extremely difficult, if not impossible, to
4 actually connect the dots with other
5 jurisdictions.

6 Q And to the extent that we're here addressing the
7 question of movement across international
8 borders in particular, you described that
9 Westphalia old-fashioned conception of what a
10 country's sovereignty is and where it ends and
11 the interrelationship between independent
12 sovereign countries, I take it that among other
13 complications you have the feature that one or a
14 few, a number of jurisdictions may have pretty
15 strong secrecy or privacy protections over
16 information and in addition to that the fact
17 that they may be either very slow or even
18 non-cooperative in responding to requests from
19 other countries for information to connect the
20 dots.

21 A (CL) And I think one of the things that we see
22 is that it's countries that have fairly
23 significant capacities such as the United
24 States, United Kingdom, Germany that have made
25 inroads here precisely because it requires so

1 many resources and then you have to put them
2 together in an effective fashion. But I think
3 jurisdictions such as Ireland are telling
4 because it shows that smaller jurisdictions can
5 if they put their heart and mind to it actually
6 also do this and work together effectively in
7 terms of some of the synergies that we've
8 developed. And so I think we still think of
9 sovereignty as sort of these state boundaries,
10 but of course if you think about a globalized
11 world, the border in effect for a crime starts
12 wherever -- for money laundering starts wherever
13 the initial sort of predicate transaction,
14 predicate crime might have taken place, and I
15 think as Garry pointed out, the criminals don't
16 think about these as borders when they move
17 their assets, but they do think very much about
18 borders when they exploit markets of opportunity
19 within those jurisdictions. And so we have an
20 enforcement investigative model that is
21 ill-adapted to the globalized transnational
22 space in which criminals move and operate in the
23 21st century. And if you think that
24 globalization only works for trade, let me tell
25 you globalization has worked really

1 fantastically well for transnational organized
2 crime.

3 Q Let me pick up on the point that we see at the
4 bottom of that page. The sentence, the last
5 paragraph we see there begins:

6 "Finally there's been a rapid rise in
7 money laundering as a service."

8 What is money laundering as a service and what
9 does that describe, please?

10 A (GC) I'll jump in. The money laundering as a
11 service, I mean, we've done or when I was
12 formally in the RCMP and the RCMP used to set
13 storefronts up and actually act as a conduit for
14 criminals to move their money. That we saw it
15 in the -- reflect on the Panama Papers, and I
16 know the commission has heard a little bit about
17 it, and essentially what you've got is
18 individuals going out that are willing to move
19 money, they become basically effectively
20 professional money launderers, and they act on
21 behalf of various criminal organizations. And
22 they become very good at it because they've
23 created a network and that network will be, you
24 know, a number of gatekeepers, because they have
25 the money to hire the best of the best, and

1 those gatekeepers are accountants, lawyers,
2 notaries around the world. And they set all of
3 these accounts up and for a fee they move their
4 money and that's going on as we speak.

5 Q Lets me turn to the next page, page 8, please.
6 Under the heading of "Options" there's reference
7 again to the UWOs, unexplained wealth orders,
8 which, I think, Mr. Simser, you touched on
9 before. Dr. Cockfield, maybe I'll just hover
10 there on the options discussion and see if you
11 had further comment about unexplained wealth
12 orders or other options that are canvassed in
13 this part of the paper.

14 A (AC) The only comment I'd make with respect to
15 the unexplained wealth orders is there has of
16 course been some critique, we may get to in this
17 the cross-examination, that such orders are not
18 appropriate for Canada. We have a charter
19 section 8 that prohibits unreasonable state
20 searches, for instance, whereas Australia, the
21 UK and other jurisdictions don't have it. At
22 least in my mind there is a way, and I think
23 we're going to get into, you know, lawyer
24 disclosures of payments by money launderers or
25 other criminals later on. There is a way to

1 construct these UWOs in a way that complies with
2 the charter.

3 Q So you don't look at that and say there's an
4 impossibility, that the charter simply is a
5 roadblock. It may be a complex issue to
6 address, but I take it from that comment you
7 think there's a way through.

8 A (AC) Well, Jeffrey can answer more directly, but
9 so far our proceeds of crime legislation, at
10 least in most circumstances, has withstood
11 suggestion constitutional scrutiny. In other
12 words, we're seizing assets of criminals prior
13 to any conviction of these individuals, which
14 seems to reverse the notion that one is innocent
15 until convicted. And so that gives one some
16 confidence that UWOs can similarly be charter
17 proofed.

18 Q Mr. Simser, why don't I invite you to pick up on
19 that.

20 A (JS) Sure. Where they do operate, I mean, it's
21 a different constitutional matrix, but it's not
22 one that is devoid of rights. So in the United
23 Kingdom, for example, they -- well, I'm not sure
24 where Brexit will leave them, but they have the
25 ECHR, the European Convention on Human Rights.

1 And where this tool was really compelling was
2 the very first case that they brought in England
3 and it involved a woman. Her last name is
4 Hajiyeva, I think, H-a-j-i-y-e-v-a, and she was
5 the wife of the chair of a bank in Azerbaijan --
6 sorry, I'm not pronouncing that very well --
7 which is largely a state controlled bank. In
8 2009 a company in the British Virgin Islands was
9 incorporated and bought a property in the city
10 of London. The cost of the property was I think
11 11 and a half million pounds. And so they went
12 after her because she's the wife of the chair of
13 the bank, or the banker himself was arrested in
14 Baku and he was convicted and jailed. They
15 tried to extradite her and the ECHR, which we
16 just talked about, said that would be
17 inconsistent with her rights to extradite her.
18 But they did go after the property because she
19 had absolutely no known source of income. And
20 seems to me, you know, when we look at things
21 like politically exposed people and corruption
22 if you're a kleptocrat, if you're stealing from
23 Nigeria or a central Asian state, you don't want
24 to keep your money there because part of your
25 theft has destabilized the place that you live

1 in and you do want to get it to London or New
2 York or Toronto. And you will do it, and this
3 is a perfect example of all the trails that are
4 obfuscated and make it very, very difficult for
5 law enforcement. So that's where the -- that's
6 I think where the tool could prove useful and
7 powerful and there are some protections within
8 it, minimum thresholds and so on and so forth,
9 both within the Australian and the UK statute
10 before law enforcement can avail themselves of
11 its use.

12 Q Thank you. Let's turn to the bottom of that
13 page and discussion about the strategies and,
14 Dr. Leuprecht, why don't I turn to you. The way
15 this is framed in the context of your paper with
16 some care as to frame these as strategies within
17 the control of provinces, this may in short
18 order I expect we'll get into some questions of
19 constitutional and federalism issues. But why
20 don't you help us understand what are the
21 strategies that are discussed in this part of
22 the paper.

23 A (CL) Yes, it's trying to think more broadly
24 about where the value is being created and how
25 the value is being laundered because that's in

1 essence sort of what is happening. So thinking
2 beyond mere money. You already had raised the
3 issue, for instance, of art, valuable art that's
4 often stored in free ports where it becomes very
5 difficult to touch, to access, even to know that
6 it's there.

7 So criminals are -- think of these as
8 multinational corporations. They look to
9 diversify, and so they're engaged in a whole
10 different set of areas in order to park the
11 money, to launder the money, or to change the
12 value of the resources that are at play. And so
13 one of the challenges that we currently have is
14 a relatively low or lax reporting standards for
15 some of the entities where within that chain
16 where some of the laundering, some of the
17 layering, some of the storing is happening. So
18 the proposition then that some of the obvious
19 targets simple creating a regulatory regime
20 where these have to report, whether that's
21 casinos, it's real estate, it's high-end vehicle
22 sales, for instance. That's become a
23 particularly popular element in Canada in the
24 money laundering business. At the other -- so
25 that's sort of the -- there's the regulatory

1 strategy.

2 The other, sort of the institutional
3 strategy. And there we mention the integrated
4 national security enforcement teams that now
5 exist in four major cities and they're smaller
6 entities. Then these bring together a host of
7 federal/provincial and municipal entities in
8 order to investigate terrorism threats. They
9 also have, some of them have international
10 components that are embedded within those teams
11 and so it allows a very expeditious
12 investigation because the moment you have a
13 threat it means that there may be an imminent
14 threat and so you need to investigate that, but
15 you also need to investigate it effectively and
16 with a reasonable chance of getting a
17 prosecution out of it, and there's also of
18 course a public interest dimension to
19 investigating terrorism cases as a deterrent.
20 And so we raise this because it shows that we
21 can do it for terrorism, but why don't we do it
22 for money laundering? So that this is we've
23 created these structures, and perhaps there's
24 also here an opportunity to make the case for
25 we've put all this money into terrorism, which

1 is a threat but perhaps not as significant
2 threat as the daily challenge that money
3 laundering poses in terms of criminality to our
4 local communities, and we've put all these
5 resources into terrorism that have arguably
6 drawn away resources from the ability to
7 investigate money laundering. So here's an
8 opportunity perhaps not just for institutional
9 learning but also strategy to rebalance some of
10 those resources and to also look at some of the
11 interaction effects because of course some of
12 the terrorists are also engaged in financing and
13 laundering activities, including coming out of
14 Canada, that destabilize other parts of the
15 world.

16 Q I'd like to pick up on something you just said
17 about the terrorist, the profile of
18 anti-terrorism measures, and Dr. Leuprecht, I
19 invite you to comment on this. Is it the case
20 in your view that the nature of secretive money
21 laundering activity which may well be out of
22 view, obscure to the average person, not
23 necessarily having an immediate direct effect
24 the way, let's say, a violent crime might for
25 the individual people effected, is there a way

1 in which in terms of the political profile, in
2 terms of the momentum that does or doesn't build
3 up to address the problem is less, for example,
4 than terrorism or other areas where there's a
5 need for criminal law enforcement and other
6 regulatory responses? Is there something about
7 money laundering, in other words, that allows
8 for this to have a lower profile in the public
9 and the governmental and regulatory response?

10 A (CL) I think so there's psychological dimension
11 that of course people presume terrorism to be
12 this sort of very immediate threat to
13 themselves, even though we know you have a
14 better chance of being struck by lightning than
15 to be injured in a terrorist attack. So there's
16 the psychological I mentioned that people just
17 don't associate money laundering or things like
18 tax evasion with sort of particular harm to
19 communities. They don't realize that the gang
20 shooting in a neighbourhood a few streets down
21 or that the house that they can no longer afford
22 because the prices keep on rising are daily
23 directly related to criminal activity and to
24 criminal activity on a very large scale and that
25 in Canada we've taken this really to the next

1 level by having created in many ways near
2 optimal circumstances for to engage in money
3 laundering and to park your illicit gains.

4 The other dimension to this is that I think
5 we've put a lot of -- when you put a lot of
6 resources at something on the decision-making
7 side, the policy side, it shows you can figure
8 out complex and vexing problems. So terrorism
9 is different from regular crime because in many
10 ways crime you prosecute after the fact. Most
11 of the terrorism cases you want to prevent that
12 incident from happening. So there's a
13 prosecution potential, but there's also a
14 significant disruption potential where it means
15 you might never prosecute. So this is also an
16 opportunity on the money laundering side. We
17 always thing that we need to throw everybody in
18 jail, but in many cases for bad guys one easy
19 way to deter them is you simply take the assets
20 that they have. Maybe we can't throw them in
21 jail, we don't have enough evidence to get a
22 criminal prosecution, but we can still take
23 their illicit gains or we can disrupt some of
24 the flows from their illicit gains. And so
25 Australia, for instance, passed some

1 jurisdiction that now makes it easier under
2 certain circumstances, same in the UK, to
3 disrupt certain financial flows when there's a
4 high probability that these flows are illicit
5 flows. So kind of to think in a more -- so we
6 can do this from a legislative side, but we can
7 also think about this as a different problem.
8 It doesn't need to a criminal problem; it can be
9 a deterrence and disruption effect that we can
10 also achieve and all these have been in play and
11 that we've learned a lot from on the terrorism
12 side that we can benefit from as we move forward
13 on the money laundering side.

14 (GC) If I could add one thing, too. I think
15 it's really important that this commission
16 understand that we talk about society and the
17 impact of money laundering and are we really
18 understanding it. And I think if we were to
19 reflect what came out of the Charbonneau
20 Commission and the amount of corruption that was
21 enabled or -- and I will use the term "enabled"
22 to incur in the province of Quebec because
23 nobody really took a grasp of the organized
24 crime problem in that province. And I've gone
25 on record stating it. It's occurring in other

1 areas. You know, I know of a small town in
2 Ontario that I was very familiar with that had
3 the whole main street rebuilt by somebody that
4 came out of the woodwork and had all kinds of
5 money, and it was welcomed by the political
6 masters and that community. Nobody looked into
7 the background. And it's that type. How does
8 it impact? Well, it impacts because that was a
9 case of where the tradesmen were paid in cash.
10 This is impacting I believe every one of our
11 communities in this country, and I just don't
12 think we've taken a real in-depth look at it and
13 we need to start realizing it is having an
14 impact. It's impacting the amount of tax
15 revenue that's being collected. It's impacting
16 our communities, and I believe it's leading to
17 corruption in areas that we never thought would
18 exist.

19 Q Mr. Simser, I saw you on mute, and I might be
20 reading too much into your decision to unmute.
21 But did you have something to add?

22 A (JS) Yeah. I think one of the problems is that
23 so money laundering, sometimes we get hung up on
24 the cash side of it. It's not really always
25 about cash. It's about moving value. So there

1 are things that fly under our radar and are
2 sight unseen. So, for example, Colombia, as we
3 know, is a major source country for drugs,
4 particularly cocaine. But they're also -- jade
5 and emeralds are produced in Colombia. And so
6 trade-based money laundering, I know that's not
7 really within the purview of this commission, I
8 know that the feds are trying to get their hands
9 on it, but it's very easy to take low value
10 jade, for example, oil it up and send it across
11 the border to Canada and under or over invoice
12 depending on what you want to do to move value.
13 And then all of a sudden you've moved this
14 massive amount of value in exchange for the
15 drugs. That all goes sight unseen, and even a
16 really good customs inspector, unless they're a
17 gemologist, they won't necessarily know what the
18 bad guys are doing. And then for the public
19 they, you know, that's a trade transaction
20 involving some jewellery. You know, that's what
21 they might see, but in fact it's not really.
22 That's what's putting cocaine on the streets of
23 Vancouver or fentanyl or pick whatever your
24 problem is. That's actually the harm that's
25 caused, but we don't always connect that to the

1 laundrying activity. But someone is not
2 bringing in fentanyl or cocaine into Vancouver
3 because they are pro drug advocates. They're
4 doing it to make money and they want to get that
5 money beyond the reach of law enforcement so
6 that they can enjoy it.

7 Q Let's turn to page 9 of the report please. At
8 the bottom of that page there's a discussion
9 about data analytics. Maybe -- I welcome other
10 panelists again to redirect but, Dr. Leuprecht,
11 if I might you to help us understand what data
12 analytics is and how does it relate in the
13 context of your paper to money laundrying?

14 A (CL) So I think there's three important
15 components to data analytics. But let's just
16 kind of understand what data analytics can help
17 us do by taking this large, vast amounts of
18 data. It can help you about build a baseline of
19 what normal activity looks like. And so then
20 relatively to this normal activity, and this is
21 why I mentioned the FINTRAC example before, so
22 FINTRAC had access, for instance, to all the
23 transactions across that come in and out of
24 Canadian borders. You now have a normal picture
25 of what in and out flows look like from Canada

1 to different jurisdictions among different
2 entities and then you can pick up outliers from
3 those transactions and you can look at what is
4 happening with this particular outlier. This
5 person's never transferred \$100,000 before. Now
6 they're transferring \$100,000 multiple times.
7 So this, for instance, is came into play
8 significantly in Australia, so when you have
9 bank machines where you can deposit \$40,000 in
10 cash in one transaction those things start to
11 show up on some of the data analytics because
12 most of us don't deposit \$40,000 in cash at bank
13 machines. But what it can also do -- and this
14 is sort of the 9/11 problem. The people who are
15 really good, they will try to look too normal.
16 They know exactly what normal activity looks
17 like. And so they will try to be as close to
18 the baseline as possible. So this is -- as I
19 say, I call this the 9/11 problem because that's
20 what the 9/11 bombers did when they lived in the
21 US. They tried to be more American than the
22 Americans. So if you're only looking for the
23 outliers you're going to miss some of the best
24 people who might kind of really try to blend in.
25 The other is that it gives you a pattern of what

1 transactions look like and how transactions
2 fall. So these can cluster and then you can
3 look at these different clusters and you can try
4 to figure out whether there's anything
5 particular about these clusters and what the
6 characteristics and nature of these clusters
7 are. So the problem is that much of sort of the
8 data analytics, so there's the low level I would
9 say of people who, you know, we can teach them
10 in a master's degree of how to plug data into a
11 software program and then it might give you back
12 sort of some interesting results, but really
13 what we need to do is help people also with some
14 of the much higher-end algorithms that are
15 involved here. So if you take, for instance,
16 the ability to use data analytics not just for
17 transactions, but you might also use it to
18 generate networks, so you can generate networks
19 of people who are related to one another, how
20 often they talk to one another, the amount of
21 money that flows among them. I should add, you
22 know, that as Garry will point out for some of
23 this you need -- this is warranted activity of
24 course, so you need to justify first why you
25 want this type of activity. But it gives you a

1 sense of how people are related to one another.
2 Once you have a network, then it gives you an
3 opportunity not just to understand who the key
4 players in that network are but what the
5 implications for the network might be if you
6 remove those players. So we know, for instance,
7 today that, you know, we're all familiar with Al
8 Capone and the big effort to go after Al Capone,
9 but it turns out that Al Capone was actually not
10 central to the criminal enterprise in Chicago at
11 his day. So removing Al Capone from the
12 network, and we can reconstruct this
13 scientifically today using data analytics and
14 social network analysis, showed us that that was
15 actually not going to make a particularly
16 important, a particularly key impact. And so
17 this is something, for instance, that the
18 National Crime Agency in the UK does quite well.
19 They can take sort of a high-level view of where
20 the challenges lie, what does the data tell us
21 about some of the strategic assessments and the
22 challenges, and then how do we allocate
23 resources, because what might look like an
24 attractive target for an investigator might
25 actually turn out to be not particularly -- not

1 giving us particular payoff or be particularly
2 useful from the broader perspective of the
3 network that we might want to disrupt, or we
4 might be able to from an investigative
5 perspective look at someone and say oh, we've
6 got predicate offence; we can prosecute this
7 individual. But from the strategic overall
8 benefit of well, we actually want to take out
9 this entire network or disrupt this network,
10 that individual might actually not be the best
11 person to go after. But as I say, the data and
12 technology, the challenge behind this, and so
13 this is why you really need -- you really need a
14 separate -- what we propose that you need a
15 centre of excellence for technology where you
16 can actually put people who really understand
17 some of the data analytics side can write some
18 of these algorithms and also help to interpret
19 some of the data with the investigators and then
20 forge a broader strategy rather than going after
21 sort of the low hanging fruit in terms of oh,
22 here's someone we can go after, let's do that.

23 Q Go ahead.

24 A (AC) Brock, I also want to make it clear to the
25 commission what we're talking about with respect

1 to data analytics is no longer in the realm of
2 science fiction. For example, the New York
3 State Department of Taxation eight years ago
4 started an AI and data analytics program where
5 when individuals apply for a tax refund they
6 have got an algorithm that looks at that
7 particular taxpayer and runs, you know, a big
8 data set involving literally hundreds of
9 millions or billions of data points where they
10 see, you know, maybe that person who applied
11 actually has a partner living with them where
12 they're not disclosing even though the tax law
13 says that they should. And so the New York
14 State Department as soon as they introduced it
15 they realized that it was cutting back on
16 fraudulent taxpayer applications and saving
17 about \$3 billion a year. Similarly the CRA
18 currently has a data analytics program with
19 respect to the disclosure of offshore income, so
20 they're trying to look at high net worth
21 individuals and see if they are accurately
22 self-disclosing their income. So the problem
23 that Christian talks -- is really getting at is
24 that there is a lot of very useful and timely
25 information floating out there that can help law

1 enforcement tax authorities. It's all over our
2 country. Maybe it's even offshore. But we have
3 these things today called computers and even
4 though humans can't effectively
5 assimilate millions or hundred of millions or
6 billions of data points that computers can
7 through artificial intelligence, machine
8 learning, blockchain and so on. And so if we
9 can have a way to -- it will take legal changes
10 so that FINTRAC and other federal agencies can
11 share more effectively with provincial agencies
12 like the AMLI that we propose. But if we can
13 get all this information, this useful
14 information and get to the people who need it in
15 a timely fashion in our view that would be a
16 great step forward in disrupting money
17 laundering networks.

18 Q I take it the sort of approach that is being
19 discussed as we think about data analytics is
20 the way and it's not case of saying here's the
21 bad guy or here's the tip or here's the one
22 transaction and then tracing that out; rather
23 it's looking at a macro level at an enormous
24 abundance of data and I take, Dr. Leuprecht,
25 from your comment about having a baseline to

1 compare it against, so I think that might
2 connect to your comment earlier about seeing the
3 ones as well as the zeros but having that
4 contrast to understand it. And then drawing
5 insights and lessons and maybe pursuing things
6 based on that, based on an understanding of all
7 of the data.

8 A (CL) And this conversation, I know some of this
9 makes people a little nervous and the key to
10 this discussion is the understanding between
11 metadata and data. So data is content.
12 Metadata is simply sort of how different
13 entities connect and how often they connect, but
14 we might not know the content of those
15 connections, but simply then that gives a sense
16 of where there might be sort of some connections
17 that seem suspicious that would then allow for
18 us to concentrate our efforts in a more
19 efficient and effective fashion, and a lot of
20 this data we can already legally put together
21 today. We just don't, in many cases haven't
22 done this particularly effectively, and I think,
23 you know, if we even look at the RCMP and its
24 dire need to renew its IT infrastructure,
25 simply actually getting us to the 21st century

1 it terms of how government thinks about data and
2 how government deals with data would already get
3 us I think a lot further, but you know, given
4 that you're in British Columbia, it's a
5 British Columbia commission, I mean the
6 BC privacy commissioner is I think in many ways
7 one of the leading entities about and not just
8 in Canada but in the world in sort of how they
9 think about data and do this sort of within a
10 legislative constitutional privacy framework.
11 So there is very good expertise in Canada
12 already, but there's many areas where we could
13 be doing a lot better.

14 Q I'd like to pick up on that comment about the
15 privacy implications or aspect of this. We've
16 had some evidence in the course of our hearings
17 to the effect that data analytics does not
18 necessarily mean less privacy. There may be
19 ways to indeed enhance the protection of privacy
20 through privacy preserving analytics. Now, I
21 don't know if that's something that panel
22 members here are in a position to comment on.
23 But I'd like to put that question. I see a few
24 of you unmuting and I see Dr. Cockfield's hands
25 going up, so that's a good sign from my point of

1 view.

2 A (AC) I'll let the other -- I'll let Jeff go
3 ahead first.

4 (JS) I was going to speak to a slightly
5 different point. And that is that there are
6 patterns I think that we just don't understand
7 what we could produce with. So, for example,
8 there are pre-money laundering activities that a
9 lot of enterprises undertake, building shelf
10 companies and so on and so forth, and then there
11 are transactions that are inherently
12 non-economic. So if you do a series of
13 back-to-back wire transfers between here and
14 Seattle and Singapore and back to Vancouver,
15 that makes no sense economically because you're
16 paying at each leg of the transaction. So I
17 think there's patterns that could be found.

18 The only other point I wanted to make, and
19 I'll turn it back to Art in a second, is that if
20 you're really serious about going after
21 organized crime and about going after money
22 laundering, aside from the data analytics you
23 need an infrastructure to do it. Disclosure
24 requirements are punishing, they're massive, and
25 the last thing that you want to do is two or

1 three or four years into a major project on
2 organized crime discover whoops, in the first
3 tranche we revealed three confidential
4 informants in our disclosure to the defence
5 lawyer or whatever because that will blow up the
6 entire prosecution and the best you'll be able
7 to do is maybe a civil forfeiture action. So
8 you need the technology and you need the people
9 that know how to use it and war game it
10 strategically so that you don't end up investing
11 massive amounts of resources going after a
12 target and then losing it in the year three or
13 four because that will loss confidence in the
14 whole system. Art, over to you.

15 (AC) I was involved in a consultancy, a
16 legal consultancy about ten years ago with the
17 Office of the Privacy Commissioner of Canada
18 along with Professor Karim Benyehlef at the
19 Université de Montreal, and we helped the
20 privacy commission develop a document called "A
21 Matter of Trust," which is essentially a series
22 of privacy steps all federal agencies should
23 undertake when they're involved in matters of
24 law enforcement or national security.

25 So you're exactly right, Brock, that one can

1 create a template that both preserves privacy
2 and actually help in our view, and we had
3 extensive negotiations with public safety
4 officials, law enforcement officials. So you
5 can create a template that protect privacy and
6 actually helps investigators. One example of
7 that would be any kind of data analytics project
8 when an investigator is doing a search about --
9 you know, maybe even a social media search for a
10 target, the target of the investigation, there
11 can be a digital audit trail made. So there's a
12 worry, for instance, that maybe a cop is upset
13 that his spouse -- an abusive cop is upset that
14 his spouse has left him and he's going to track
15 her using the internet or some of his
16 investigatory technologies, and so, you know, we
17 have to have privacy protections to guard
18 against those sorts of outcomes, but this
19 document "A Matter of Trust," about a decade old
20 now, tries to account for all of these
21 interests. And again it was with support of the
22 federal privacy commissioner.

23 (CL) If I can give you a concrete example
24 from British Columbia. Commissioner McEvoy, the
25 BC privacy commissioner, for instance, had a

1 very interesting cooperative investigation
2 [indiscernible] with provincial political
3 parties because political parties now of course
4 collect significant amounts of information on
5 citizens. And worked with those provincial
6 parties to ensure that their databases would be
7 compliant with both the provincial and the
8 federal requirements and the political parties
9 did this in a very constructive and
10 collaborative fashion with the information
11 privacy commissioner. And so I think given
12 Commissioner McEvoy's and his other
13 investigations into Cambridge Analytica and to
14 Facebook and I have great confidence that
15 especially in British Columbia it is entirely
16 possible to stand up a data analytics regime
17 that will on the one hand provide the sort of
18 payoff that is required to get the results that
19 the public and government would be looking for
20 while at the same time ensuring that that regime
21 will be entirely compliant with the information
22 and privacy regimes in place provincially and
23 federally.

24 MR. MARTLAND: Thank you. Mr. Commissioner, I'm
25 going to take this chance to suggest we might

Christian Leuprecht (for the commission)
Garry Clement (for the commission)
Arthur Cockfield (for the commission)
Jeffrey Simser (for the commission)
Exam by Mr. Martland

1 take the break at this point, and then we'll
2 reconvene and I'll work our way through the
3 remainder of the report. Thank you.

4 THE COMMISSIONER: All right. Thank you,
5 Mr. Martland. We'll take 15 minutes.

6 THE REGISTRAR: The hearing is now adjourned for a
7 15-minute recess until 11:13 a.m. Please mute
8 your mic and turn off your video. Thank you.

9 **(WITNESSES STOOD DOWN)**

10 **(PROCEEDINGS ADJOURNED AT 10:58 A.M.)**

11 **(PROCEEDINGS RECONVENED AT 11:12 A.M.)**

12 **CHRISTIAN LEUPRECHT, a**
13 **witness for the**
14 **commission, recalled.**

15 **GARRY CLEMENT, a witness**
16 **for the commission,**
17 **recalled.**

18 **ARTHUR COCKFIELD, a**
19 **witness for the**
20 **commission, recalled.**

21 **JEFFREY SIMSER, a**
22 **witness for the**
23 **commission, recalled.**

24 THE REGISTRAR: Thank you for waiting. The hearing
25 is resumed. Mr. Commissioner.

1 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
2 Mr. Martland.

3 MR. MARTLAND: Thank you, Mr. Commissioner.

4 **EXAMINATION BY MR. MARTLAND (continuing):**

5 Q We have resumed. And I see three of four of our
6 witnesses. The fourth is the one I was going to
7 ask the next question for, though, so I'd like
8 to hold on for a moment. Okay. Great.

9 Just before we went to the break,
10 Dr. Cockfield, you were describing your
11 involvement in a report called "A Matter of
12 Trust" and with some help from colleagues we've
13 been able to I think find that report and I sent
14 you a message to confirm it over the break.
15 What I'm going to do is this, Mr. Commissioner.
16 It's a little out of step, but it arose from the
17 witness's evidence. I thought it might be
18 useful to make sure that we have the right
19 document as part of our record. So, Madam
20 Registrar, I understand that we've been able to
21 download a PDF of the report. We've sent the
22 link around through the Zoom chat feature. If
23 we could have that displayed.

24 Dr. Cockfield, this document, "A Matter of
25 Trust: Investigating [sic] Privacy and Public

1 Safety in the 21st Century," a reference
2 document from the office of the privacy
3 commissioner of Canada, November 2010. Is that
4 the report you were describing your evidence
5 just before?

6 A (AC) Yes.

7 MR. MARTLAND: And, Mr. Commissioner, I'll pause to
8 see if any participant raises concern. I do
9 have to seek leave because it's late notice in
10 the circumstances, but I will ask unless there's
11 an objection this be marked as the next exhibit.

12 THE COMMISSIONER: All right. I'll just pose the
13 question, then, whether there's an objection and
14 if so it should be made now. All right.

15 Hearing none, Mr. Martland, we'll mark this as
16 the next exhibit.

17 MR. MARTLAND: Thank you.

18 THE REGISTRAR: Exhibit 829, Mr. Commissioner.

19 **EXHIBIT 829: A matter of Trust: Integrating**
20 **Privacy and Public Safety in the 21st Century -**
21 **November 2010**

22 THE COMMISSIONER: Thank you.

23 MR. MARTLAND:

24 Q Witnesses, where I was in terms of reviewing
25 your report maybe I can go to page 11. So,

1 Madam Registrar, back to exhibit 828, the
2 report, please. Page 11. There's the heading
3 as we see at the top of that page "Structures to
4 Address Challenges." Mr. Simser, maybe I can
5 turn to you with respect to that discussion
6 about the structures that are needed, including
7 separating investigative and enforcement
8 function as we touched on earlier.

9 A (JS) Right. So there's two kinds of functions
10 that we envisage. There's functions in the
11 Fusion Centre where you can bring together all
12 kinds of resources, including civilian
13 resources, people that can search databases, can
14 search land title registries, all of that kind
15 of stuff. It's not necessarily police and
16 investigative focus. And then there's things
17 that you need to do properly if this is going to
18 succeed. For example, manage assets. Something
19 that's often kind of overlooked when people
20 think about civil forfeiture, but if you don't
21 manage the assets properly you'll have massive
22 problems with your program. Forensic accounting
23 is intensely important in this kind of a
24 business where you're trying to reconstruct the
25 trails and the threads of money or figure out

1 what the net worth of your target actually is.

2 And then the second side of this is a
3 different kind of thing. I think we called it
4 IET, and that's different because each
5 participant in that structure will come into it
6 with some sort of functional independence that
7 they have. So, for example, if you look at
8 CFSEU or before that the IPOC integrative
9 proceeds of crime org charts, when you see that
10 there's Canadian Revenue Agency officials there,
11 but they're noted as cubicles. They're not
12 really in the org chart because they don't
13 report in to the IET. They come in, they
14 participate, they can have conversations, but
15 the reporting structure stays within the Canada
16 Revenue Agency, and they retain their powers as
17 investigators and so and so forth within that.
18 It's the same for prosecutors. If you're a
19 federal PPSC prosecutor or you're assistant
20 Crown attorney in BC, you need to maintain that
21 independence of function as you come in. So
22 that was the thought to separate those two. One
23 is back -- the first is back office and
24 infrastructure and the second is more
25 enforcement and its target.

1 Q Dr. Cockfield, the next heading picks up on the
2 constitutional and institutional framework that
3 is appropriate. Could I turn to you, please,
4 with respect to that discussion about
5 constitutional and federalism issues.

6 A (AC) There we're highlighting for the reader
7 that the complexities associated with Canada's
8 federal system, of course we've got a lot of
9 action at the federal level with bodies like our
10 financial intelligence unit, FINTRAC, the
11 Department of Justice, Jeffrey just mentioned,
12 the PPSC, the prosecutorial arm of the federal
13 government. And so then we've got provincial
14 governments, territorial governments and then
15 municipal governments with different types of
16 authority, and so as we were constructing our
17 idea and primarily frankly was Jeffrey and
18 Christian and Garry and I supporting them, you
19 know, they took -- we took careful steps to
20 ensure to account for this federal complexity.
21 That's the only point there.

22 Q Thank you. And maybe I can turn to the top of
23 the next page because that page had a review. I
24 don't need to go back to it, but it had a review
25 of the federal agencies and role which seems

1 pretty apparent and is spelled out in the paper.
2 At the top of that page, page 12 of the document
3 we see in the first paragraph:

4 "Constitutionally, provincial governments
5 such as British Columbia have significant
6 responsibilities for AML activities in
7 Canada: for example, company
8 incorporation, tax authorities,
9 securities, real estate regulation,
10 policing, and land registry systems."

11 And then it goes on to comment to the effect
12 that there are many areas of jurisdictional
13 overlap. I wonder if you could comment on that,
14 maybe, Mr. Simser, I'm not sure who to refer
15 that. I saw a hand go up, so, Mr. Simser, why
16 don't I ask you.

17 A (JS) Sure, when I designed [indiscernible] in
18 2000 what surprised me was how much I had to
19 engage in privacy law. Subsequently it totally
20 makes sense, but what we do bureaucratically is
21 we silo institutions, we silo ministries, we
22 silo agencies, and when you need information to
23 move between those silos you need a clear
24 legislative authority for collection, use and
25 disclosure of that information. So this is just

1 highlighting, that is just one example of if
2 you're going to go into this kind of a design,
3 you need to sort of reckon with those kinds of
4 issues. We don't need to get into them in
5 detail because they get technical and it's
6 minutiae, but it is something that you need to
7 sort of think about as you're moving across
8 because the idea is fusion. The idea is to
9 bring everything together. But you really need
10 to think in advance well, what does that mean,
11 what is the information that you're needing, how
12 are you going to use it, how are you going to
13 collect it, where is it going to be disclosed
14 and all that kind of stuff. So it just becomes,
15 as Art said, it really becomes a design
16 parameter to anticipate as you build something
17 out.

18 Q And you need to anticipate ahead to where
19 something baked into the design creates problems
20 later on to the extent that you've tainted
21 someone with the wrong federalist head of power
22 or criminal law implications for a prosecution,
23 what have you. I take it those are the kinds of
24 concerns you're thinking ahead to.

25 A (JS) Yeah, because you don't want to be

1 four years out and then have a challenge in the
2 court saying, well, that information never ought
3 to have transferred from this regulatory agency
4 over into the hands of this civil forfeiture
5 lawyer or this prosecutor. Because you'll be
6 way baked in and so you just need to -- that's a
7 risk. It's a public policy risk and you just
8 try and find the right mitigation measures to
9 address the risk.

10 Q I take it as part of that that entails some
11 upfront pretty engaged *Jarvis* and *Ling* type of
12 analysis of where is information staying and
13 moving and what's the right design to avoid
14 those problems.

15 A (JS) Yeah, and the *Jarvis* and *Ling* kind of
16 analysis. So if you go into a tax office in BC,
17 you may find walls built in a weird way because
18 they're dividing between the auditors and the
19 inspectors and the investigators and they want
20 to really have a clear demarcation between where
21 those two groups are so that they are physically
22 separated. It literally gets down to that level
23 of detail.

24 Q Mr. Simser, you referred to the sort of
25 legislative basis. I wonder if I could ask you

1 this: with respect to the proposed AMLI, the
2 Anti-Money Laundering Institute for the province
3 of BC, is it your view, and your colleagues can
4 answer this too, that legislation is a necessary
5 part of this? It has to be done through
6 legislation?

7 A (JS) I think there's a couple of reasons why
8 that's so. I think that you really want to
9 think through a governance structure for
10 something like this. You want to think about
11 its relationship to the government, to the
12 ministries, to the legislative assembly, and you
13 want to make sure that the right oversight is in
14 place within the structure. And then you also
15 want to think about things like how independent
16 do they need to be, how are we going to
17 construct their budget, what are their sources
18 of revenue, how are we going to manage privacy
19 challenges as information moves through, what
20 kind of people are going to be in the agency
21 itself. Are you going to have ministry, the
22 Attorney General, lawyers? That sort of
23 question. So the cleanest way to mitigate all
24 of those risks is to legislatively create this
25 as a body and then populate it out from there.

1 Q At the bottom of that page the topic of privacy
2 which has come up a number of times already is
3 addressed in the report. The first sentence
4 there is:

5 "All provincial entities involved in AML
6 initiatives need to reckon with privacy
7 law and access to information law."

8 Dr. Cockfield, why don't I turn to you. It
9 seems maybe a bit of a bland general statement
10 to say that privacy law engages a consideration
11 and analysis of whose interest, what kinds of
12 interests are at play and very often a balancing
13 of competing interests or imperatives or
14 considerations. When it comes to thinking
15 through initiatives like the AMLI proposal, what
16 sort of analysis needs to be done and what's
17 your take on the balancing that's appropriate
18 when we think about privacy interests in
19 relation to in particular information gathering
20 and sharing.

21 A (AC) Well, I will say my views and publications
22 on this topic have evolved over the last two
23 decades. So I started writing about US privacy
24 law, I was professor in San Diego before coming
25 back to Canada in 2001, and because of the rise

1 of the digital world, of course, there was this
2 obsession with information privacy, how much
3 information can an individual keep away from
4 third parties, in particular government
5 authorities. So I really thought of myself and
6 still consider myself as a privacy advocate.
7 Since 2001 I've been a member of the Queens
8 surveillance study centre. Formally, I just
9 stepped down as associate director. That's
10 Canada's largest ongoing privacy and
11 surveillance project headed up by David Lyon in
12 the department of sociology. So we really, this
13 is a place filled with people who are very much
14 concerned about privacy.

15 And then what happened in 2012 I was
16 retained by the CBC to go through the first mega
17 tax haven data leak out of Singapore on the
18 Virgin Islands. It was obtained by the ICIJ,
19 International Consortium For Investigative
20 Journalists, and revealed to the public in April
21 of 2013. And so I've been working on these data
22 leaks, this one later on in 2016 the Panama
23 Papers, later than that the Paradise Papers, and
24 I've seen all the global financial crime that
25 Canadians are engaged in and it was an absolute

1 revelation to this tax lawyer who previously
2 just did mainly transfer pricing. But by going
3 through the data leaks we see thousands of
4 Canadians engaged in crime, hundreds at least
5 I've seen with anonymous offshore accounts. So
6 then over time I got the sense that we have
7 these very strict privacy laws within different
8 forms of legislation both at the federal level,
9 *Income Tax Act* and of course provincially in
10 provinces like British Columbia, and they are
11 there for historic reasons that we place a high
12 value on privacy in our culture. It's an
13 important norm in a free and democratic society,
14 but then I came to realize that these strict
15 privacy protections are benefitting at least
16 with respect to financial crime two main
17 parties, ultra high net worth individuals, the
18 wealthiest members are society and criminals.
19 And so then I started to think about the
20 distributive justice implications of our privacy
21 regime. I went back and I looked at writings in
22 feminist legal writings from the 1980s,
23 particularly from an American Professor Anita
24 Allen, and she had very persuasive writings
25 surrounding, for instance, the notion that a

1 man's home is one's castle, sort of Edward Coke
2 17th century. The view of course that we all
3 think that our home is a private place, but she
4 realized that when police came to investigate
5 abusive spouses, they often were turned away at
6 the door because of privacy laws. So in this
7 case she realized that privacy laws were for
8 protecting abusive spouses, engaged of course in
9 criminal activities like assaults. And so over
10 time law enforcement adjusted its thinking and
11 now, you know, they're more willing to lay
12 charges even if the victim doesn't -- typically
13 the female victim doesn't participate. So in
14 other words, the privacy implication of that
15 earlier regime was to harm vulnerable women and
16 children and keep them away from law enforcement
17 and the ability to seek remedies through law
18 enforcement.

19 It's a similar thing with the offshore world
20 and global financial crime. We have very strict
21 privacy protections. They greatly inhibit
22 federal government agencies with sharing
23 information, metadata information or personal
24 information with provincial authorities or other
25 federal agencies, and again the outcome of this

1 regime is the beneficiaries are crooks and
2 sometimes, well, crooks who happen to be -- have
3 legitimate income, they're millionaires or
4 billionaires and are moving their money offshore
5 and hiding it and they have been for
6 generations. So, you know, this has led to a
7 shift in my thinking. I cite in the report a
8 recent *Vanderbilt Journal of Transnational Law*
9 article that I came out where I reviewed
10 Professor Allen's scholarship in this area and
11 have modified my views on privacy.

12 So yes, privacy is a critical value. It's
13 protected by the charter. I think within the
14 Canadian context it resonates and is very
15 important and a lot of people are worried about
16 privacy given a lot of these digital
17 developments. Having said that, if we go too
18 far with privacy, we're hurting the general
19 public; right? If we can't catch tax cheats
20 we're losing billions of dollars a year in
21 revenue losses as a result of tax evasion,
22 domestic and global or offshore. All of this,
23 the money laundering income is illegal income
24 under Canadian law. It's subject to tax, so in
25 other words, if we've got a hundred billion

1 dollars in money laundering income each year
2 then in theory at least we could have a lenient
3 tax rate of 25 percent. We have, you know, say
4 a \$25 billion revenue loss. And there's some
5 figures, back of the envelope type figures of
6 this nature within the report. And so the
7 privacy regime if it's too strict is harming the
8 interest of average Canadians and needs to be
9 modified, at least in our judgment.

10 Q Thank you. I want to make sure I don't run
11 myself out of time and cut us short on later
12 parts of the report, so I'm going maybe pick up
13 my pace on a few of these questions. I'm going
14 to turn to page 13 with the heading on the
15 middle of the page there "Crown Disclosure."
16 Mr. Simser, you're probably well placed to speak
17 to this. The point being addressed there is
18 that there's certain classes of information that
19 require special consideration in the course of
20 designing or thinking ahead. We've picked up on
21 some of that already. Why don't I ask you to
22 speak a little bit about that in particular in
23 relation to Crown disclosure made to defence
24 counsel in the course of a prosecution.

25 A (JS) Yes, several aspects to it. One relates to

1 what Art talked about, which is sort of Freedom
2 of Information. So if AMLI is a public
3 institution you need to think about what a
4 freedom of information access request would
5 produce later. And in fact the BC civil
6 forfeiture office has had a few battles, I
7 think, with the information and privacy
8 commissioner in BC and literally around lists of
9 the staff in the BC civil forfeiture office. So
10 it's just something that just needs to be
11 thought about. And then obviously if you're a
12 Crown you have a duty of disclosure,
13 *Stinchcombe*, and you have all kinds of problems
14 that you just need to anticipate. You need to
15 worry about confidential informants because if
16 you accidentally disclose not even the name of the
17 CI but even something that would identify the
18 CI, that's a person that could die. And if
19 you're a prosecutor you're very, very, very
20 alive that's -- those are the kinds of things
21 that keep you awake at night. But you need to
22 really be able to pick through and understand
23 what you've got in your brief and the briefs are
24 massive. They are like, you know, if you were
25 to print them out, they could be hundreds of

1 bankers boxes. And we all -- we're a little
2 sublime about the fact that we live in a digital
3 world. You know, it's nothing to have
4 terabytes' worth of emails. But actually being
5 able to understand what's within that, and this
6 is coming back I think to an earlier point that
7 Christian and Art made which is AI can be
8 really, really, really valuable. In going
9 through, you can train an EI program to make
10 sure you know what you've got.

11 Q The point made at the last indented bullet there
12 under the heading of "Crown Disclosure" sort of
13 concludes with the comment that a singular task
14 force including intelligence, police,
15 prosecution and civil forfeiture litigators is
16 inadvisable.

17 A (JS) So -- and Garry might have thoughts on this
18 too, but if you're a police service and you have
19 a confidential informant, you will have a
20 handler of that informant. You will never hand
21 over to the on-the-street investigator the name
22 of the informant. You will give them enough
23 information so that they can verify and use it,
24 but you wall it out within the police service so
25 that because you're really -- you're worried

1 about the security of that individual. And
2 there's a lot of other things where you worry
3 about what transfers from one to the other. And
4 if you've got a singular enterprise I think you
5 risk -- it creates a risk that something will --
6 it's within the whole enterprise and then what
7 will happen is in four years in the midst of a
8 major case, a very good defence lawyer will
9 figure this out, and then you'll have a
10 vulnerability that you have no ability to
11 mitigate against and you will have invested a
12 massive amount of money in going after an
13 organized crime figure and the whole thing will
14 go pear-shaped and it will go badly for you.

15 Q Mr. Clement, I'll invite you to pick up on that.
16 From that description, it does seem like the CI
17 piece, the confidential informer information is
18 particularly poisonous fruit or troublesome and
19 create enormous problems.

20 A (GC) Managing of informants, and as Jeffrey
21 knows if they're pure informant, then there's no
22 intention of having to disclose to the court.
23 Making them an agent is a total different
24 situation. But a pure informant, yes, I agree,
25 and we've seen what can happen when all of a

1 sudden somebody gets -- information gets
2 released that uncovers or would have exposed
3 that individual. You end up losing a
4 multimillion dollar prosecution. Those type of
5 things -- it comes down to a couple of things.
6 It's got to be and I agree 100 percent with what
7 Jeffrey said. We've got to be careful of how
8 far we integrate our task forces. I do believe
9 that civil and criminal have to be kept in
10 separate boxes. I also believe that the key to
11 all of this is the experience of the prosecutors
12 and the experience of the law enforcement that
13 comprise this because that's where the mistakes
14 are made. And I think the commission has really
15 well informed itself that these are complex
16 matters. And we've got to get away from this,
17 any investigator can do any type of activity.
18 It's just not the case. This requires
19 expertise. Exactly the same for the prosecutor.
20 We need prosecutors that have a bent for this
21 and want to do this. Because they are complex.
22 So I think those two things will overcome any of
23 the risks. I think anything that we've seen in
24 recent memory that has resulted in major cases
25 being thrown out, we could go back to those two

1 points, lack of experience on both parts.

2 Q We jump ahead to page 15, please, of the report.

3 And we see at the top of that the heading about

4 "Inspections and Investigations."

5 Dr. Cockfield, maybe I'll turn to you to lead if

6 you're game to do it on this. The comment there

7 starts with the comment "there are further silos

8 within institutions." I wonder if you could

9 comment on what that describes.

10 A (AC) Well, actually I'll give that to Jeffrey.

11 He would probably be better situated to

12 answer it.

13 Q Well, and he talked about -- I had in mind a

14 very strange office design as he talked about

15 the building of the walls. Is that part of what

16 is being addressed in this part of the report?

17 A (AC) Sorry -- go ahead, Jeffrey.

18 (JS) I was going to say yeah, that's part of

19 it. And just to pick up on Garry's points, so

20 if you have a civil forfeiture office you need

21 to be careful and thoughtful about this

22 possibility. So I cannot seek a civil remedy

23 from an individual by threatening a criminal

24 sanction. So I can't go to someone and say if

25 you don't settle this lawsuit I'm going to have

1 you charged with assault or fraud or whatever.
2 You can't trade the two off. That becomes
3 something that you worry about as extortion and
4 it's that kind of thing plus, you know, people
5 moving between when they're an inspector, when
6 they're an investigator. That's the *Jarvis* and
7 Ling thing. Once you start moving towards
8 something that has a penal sanction you really
9 need to be thoughtful about what your authority
10 is, how you got your information, how you
11 sourced it, did you need a warrant. Because you
12 can't rely on, say, for example, a statutory
13 inspection or audit power if you're moving into
14 that world of actually prosecuting someone, say,
15 for tax evasions. I think it's -- Art, sorry if
16 I cut you off I, but think that's largely what
17 that section is talking about.

18 Q Maybe I can just pick up on that. In part I
19 hear you describing a concern about putting an
20 investigation or eventual prosecution in a hot
21 spot by relying on the regulatory authority to
22 gather information where in fact it should have
23 been let's say a *Criminal Code* warrant or
24 production order with the *Hunter v. Southam*
25 standard of prior judicial authorization,

1 et cetera. Is it that sort of the concern
2 you're averting to?

3 A (JS) That's absolutely part of it. I don't
4 think that by design people that would be around
5 something like this would do it intentionally,
6 but if you don't think in advance of where those
7 risks might happen, and if you don't design
8 structural mitigation measures, those risks will
9 visit you and they will visit you, as Garry
10 said, at the worst possible time after you've
11 put enormous resources and expenses into a major
12 prosecution and then it goes off on you.

13 Q Why don't I move us along to the next heading
14 "FINTRAC." I didn't read from it, but there was
15 an earlier part of the report where the analogy
16 was to drinking water from the fire hose, I
17 think. The notion of an information overload.
18 I don't propose to read this out, but on the
19 second paragraph there if you jump to the number
20 of 31 million overall reports in a country of
21 about 37 million people, it seems to be just an
22 overwhelming amount of data that is generated
23 through the reporting regime that we have here.
24 As between the witnesses, Dr. Leuprecht and
25 colleagues, I don't know who might be game to

1 speak first to that. There's a few aspects
2 here, but the first one being the volume, the
3 sheer amount of data generated through Canada's
4 FIU and the reporting regime that we have.

5 A (AC) Sure. You're correct, Brock, we noted at
6 the beginning of the report the so called
7 drinking from the firehose problem. It's
8 actually an expression that came out privacy law
9 a couple of decades ago when people realized
10 that in this new-ish digital age, I guess that,
11 you know, the transition started way back in the
12 70s getting away from analogue technologies, and
13 Jeffrey mentioned this, it's so easily near
14 costless to aggregate so much information about
15 anything, so even a Suspicious Activity Report
16 which we don't collect in Canada, we have
17 Suspicious Transaction Report. But if you think
18 about it, there could be multiple data points
19 even within one particular report. Especially
20 if we move on, as we're advocating, to look at
21 suspicious activities. So the FINTRAC has
22 various data analytic programs underway and it
23 tries to parse through this information as best
24 as it can, but it's highly restricted by federal
25 law in terms of what it can do. So it's as

1 we've indicated previously, it's primarily just
2 passive. It sucks up the information.
3 Sometimes law enforcement presents FINTRAC with
4 a voluntary information record and requests
5 different information and FINTRAC comes through,
6 but if you look at the numbers that we set out
7 and compiled for the Cullen Commission by the
8 various federal agencies we can see that there's
9 actually very little action when it comes to
10 inspections and examinations of reporting
11 entities. So it's, you know, you've got maybe a
12 one or two percent rate of examination. So if
13 you're a money service business operating in BC,
14 and I've interviewed David Eby about a year ago
15 about this, and incidentally we're quite proud
16 to see the Cullen Commission what it's up to.
17 I'm very grateful to Mr. Eby. I think he's the
18 most important politician in our country that's
19 pursuing an agenda against financial crime and
20 he's the one who's accounting for the interest
21 of average Canadians and so we very much welcome
22 the providence that he has initiated and that
23 this -- that you're part of here today. But in
24 any event, I'm just making the point that we
25 need a lot of political pressure to push this

1 through and I'm glad to see that BC is being a
2 part of that. Sorry, Brock, I probably strayed
3 from your initial question.

4 Q I won't call you out on it, but you did stray a
5 bit. Let me turn back to the firehose for a
6 minute, that sort of concept, and in fact maybe
7 I'll add a second component to it. There's
8 reference here in that paragraph; I tried to
9 draw your eyes to the 31 million overall
10 reports. And then here is something that I was
11 surprised to read, and I'll welcome any of you
12 to the extent you may have a take on what would
13 explain this. The amounts dealing with one
14 particular comparison over about a ten year
15 period. The amounts represent an increase of
16 558 percent in about a decade. Is there -- do
17 you have a view on what would explain that sort
18 of increase in volume?

19 A (CL) So I think simply putting up that
20 page drives home the point, and I think Garry
21 would echo this, that this is not something a
22 regular investigator in a law enforcement agency
23 or your regular sort of prosecutor can pick up.
24 It requires very particular skill sets to deal
25 with these data and currently by and large in

1 law enforcement in Canada, even FINTRAC could
2 share all this data, by and large most entities
3 would have no idea where to even begin let alone
4 what to do with this data. So it reinforces we
5 really need to learn to understand data
6 analytics and large data within our institutions
7 and there's capacities but they're sort of
8 sprinkled throughout. The increase that you
9 alluded to is really important because this is a
10 trajectory that will continue. It will continue
11 for two reasons. One is technological
12 development and simply the fact that we're
13 digitizing ever more of the transactions in
14 which we are engaged so we're able to capture
15 more of these transactions by virtue of
16 digitizing them even within the regimes that we
17 have. The other is that the increasing number
18 of transactions that are not human generated but
19 are machine generated from one machine to
20 another, sometimes referred to as internet of
21 things. And with 5G those sorts of transactions
22 will explode generally sort of in terms of data
23 transactions. So we will continue to see the
24 volume of data, financial data and the ability
25 to collate that with other types of data,

1 continue to expand exponentially, and so we
2 really need to think about how do we then both
3 legally but also in terms of the capabilities
4 and capacities structure an entity that is not
5 just postured for today's data environment but
6 for tomorrow's data environment and the
7 complexities that will bring in terms of
8 financial transactions.

9 Q And that connects to your data analytics thesis
10 or argument that all the more need in the face
11 of an overload like that that's increasing to
12 engage in something beyond the notion of a
13 person sitting at a desk reading, trying to read
14 reports.

15 A (JS) If I could just add, too, we have a
16 regulatory system that prizes quantity over
17 quality. So if you read FINTRAC and their
18 guidances they want this to be a risk-based
19 system, but if you're actually a financial
20 institution and you have a big computer running
21 all this stuff it's much, much easier just to
22 kick everything out because you're protectively
23 filing anything that might remotely be of
24 interest to the regulator and that overloads the
25 whole system. So that's I think one of the

1 problems with the way that the FIU works is a
2 bank or a financial institution is actually
3 encouraged, I think, not directly but there is
4 an incentive for them to put quality because
5 quantity first, because if they don't and they
6 miss something they will be punished through an
7 administrative penalty or something else. So
8 it's a lot easier just to file everything
9 without sort of sorting the wheat from the
10 chaff.

11 (CL) On the institutional side that
12 generates many more false positives. So you've
13 got to make sure that the positives you generate
14 are actually the right positives both for legal
15 reasons but also for strategic and sort of how
16 you allocate scarce asset reasons sort of
17 reasons. This is becoming ever more
18 challenging in this growing data environment and
19 that's why you need people to understand data.

20 (GC) The other thing I think that is
21 important to understand is that -- you know,
22 I've been a real proponent speaking this in
23 numerous events across Canada, but we need
24 actionable intelligence coming out of FINTRAC
25 and we also need to ensure that, you know, it's

1 federal level."

2 That might be a very broad or may be directed at
3 federal legislative change, but I'd like to
4 understand what is it that the FinCEN approach
5 offers investigators and regulators that we
6 don't have and what kind of a difference that
7 would make. Mr. Simser, maybe I could see if
8 you're able to field that.

9 A (JS) Sure. We took a timorous policy approach
10 when we created our FIU and we were very
11 worried, it was early days. I say "we," the
12 federal government. And so they were worried
13 about privacy and charter impacts, and if you
14 look, for example, FINTRAC has to file reports
15 every year with the privacy commissioner. Very
16 much part of the design. So if they're going to
17 release information to, say, Garry as a police
18 officer, they have to do their own analysis of
19 that information and come to the reasonable view
20 that it's reasonably necessary, say, for a money
21 laundering investigation. In the FinCEN in the
22 American system it's a little bit different. So
23 one of the police officers that works with
24 Garry, they have to be registered they have to
25 be trained and all that stuff. But they can

1 literally go right into the database and look at
2 the STRs or SARs and the currency transaction
3 reports and then try and see whether something
4 fits with the investigative footprint that
5 they're developing for a particular target. So
6 they have a direct access into the database and
7 they're not reliant on a civilian, you know, a
8 bureaucrat frankly in a federal agency to tell
9 them whether information is suitable or not for
10 a potential money laundering investigation.

11 Q Do you have a comment, Mr. Simser, or your
12 colleagues about how from a BC provincial point
13 of view here how we should try to assess the
14 value, effectiveness, relevance of the FINTRAC
15 data with respect to anti-money laundering
16 initiatives here. What are the right kinds of
17 measuring sticks to use for that?

18 A (JS) One of the ones that you can look at, and
19 I'll defer to my colleagues as well, is a lot of
20 the intelligence that FINTRAC produces comes out
21 of I think Art or Christian mentioned voluntary
22 information requests. So it's a very reactive
23 process. So police officer is targeting Joe
24 Blogs. And they have so much information. They
25 go to FINTRAC and they say do you have any

1 information related to Joe Blogs, here is why we
2 want it. And then FINTRAC uses that and goes
3 through the database to see whether anything
4 matches up to the target. And that's fine.
5 It's actually valuable in its own way, but it's
6 entirely reactive. And what it doesn't produce
7 is sort of actionable intelligence. You know,
8 obviously this submission exists because there
9 is an underground banking structure apparently
10 for transferring value within British Columbia
11 involving casinos. As far as I know that
12 infrastructure is still there. And as far as I
13 know there's nothing really -- and I don't have
14 any personal knowledge about this, but the
15 question is what could the FIU do in terms of
16 looking at activity reports in British Columbia
17 so that police and regulators could get on top
18 of that banking infrastructure. Because unless
19 a police officer knows there's a target and then
20 makes the request and gets into that reactive
21 mode the FIU isn't really playing that proactive
22 role.

23 Q Let me turn to the discussion that follows about
24 MLATs, Mutual Legal Assistant Treaties.
25 Mr. Simser, if I might stay with you. There is

1 a comment about four lines down in the second
2 paragraph under that discussion about the
3 request tending to be ponderous, bureaucratic
4 and very slow.

5 A (JS) Yeah. So if you're an investigator you
6 look for informal networks wherever you can
7 because there certainly is an ability, Canada
8 has a central authority. They have -- there's a
9 treaty process. If there's a treaty with
10 another country they work with the other central
11 authority. Each central authority has to
12 satisfy itself about the ask. Then it has to go
13 through the process in the other country to get
14 the assistance and the information and so on and
15 so forth. So it is ponderous, it's slow, it's
16 bureaucratic, and there's lots of networks that
17 exist. CARIN is the Camden asset recovery
18 information [sic] network, for example, which
19 the Irish were pivotal in creating. Sort of a
20 very informal network which information can
21 transmit through and again FIUs have a network.
22 FINTRAC has agreements I think with 50 other
23 FIUs around the world. And we used to joke if
24 an American wanted information they should go to
25 FinCEN, which will ask FINTRAC, and they will

1 get the information far faster than they would
2 through an MLAT. But I think it comes back to
3 Garry's point earlier that we're all sovereign
4 counties, we all have borders and so when you're
5 in another jurisdiction in someone else's patch
6 you have to adhere to this very formal process.
7 The last thing that I would say is there's no
8 equivalent of an MLAT in the civil forfeiture
9 world although we have developed some
10 workarounds to make things work in BC and
11 Ontario.

12 (GC) I think it's important to note also, if
13 I may, that at least the RCMP has the liaison
14 officer program with officers stationed in a lot
15 of countries, and having been one I can tell you
16 it definitely speeded the process up than having
17 the MLATs. MLATs can take -- I can tell you
18 I've been on the receiving end of this, I've
19 waited 28 months for requests out of the United
20 States because I get so many.

21 Q Wow. So it can become stale?

22 A (GC) Yes.

23 Q Let me turn to the common reporting standard.

24 Dr. Cockfield, it makes sense that I ask you as
25 the tax expert here about what the common

1 reporting standard is and its relevance.

2 A (AC) This is a reform project that dates back to

3 2013 by the OECD and it's been recently joined

4 by the G20, which includes of course big

5 countries like China and Russia to give it more

6 of a political impact. So one of the big

7 problems of course in pursuing money launders as

8 we've indicated is you simply move your money

9 across the border and then Canada can't find it.

10 Historically that would normally be the end of

11 the story. There's only a couple of tax

12 authorities in the planet, maybe Germany and the

13 United States that have ever pursued offshore

14 tax cheats with any rigour. So that would be

15 the end of the story and we've had information,

16 cross-border information tax information

17 agreements, treaties and so on, for decades, but

18 the CRS, the common reporting standard is a new

19 mechanism, and the basic idea there it's a

20 global agreement and Canada is participating.

21 It's now legislated within our federal *Income*

22 *Tax Act* and now every Canadian bank must keep

23 records about non-resident deposits within the

24 bank and if they're above a stipulated threshold

25 then Canada will share that information with a

1 partner so that if somebody in Singapore has
2 \$100,000 in the Bank of Montreal in Toronto,
3 then the Bank of Montreal reports that to the
4 CRA and the CRA shares it with the Singaporean
5 tax authorities and in theory, then, the
6 Singapore can target that individual who may be
7 engaged in offshore tax evasion via Canada. So
8 all of this is to hunt down what are called the
9 beneficial owners of the assets. As we've
10 explained often moneys hidden through this
11 process of layering in the tax haven data leaks
12 like the Panama Papers, sometimes I would see a
13 chain of six up to maybe 15 entities and they
14 could be both business entities like
15 corporations, legal entities like trusts and
16 foundations. All of this is to make it harder for
17 investigators to find things and ultimately,
18 though, a human has to own the asset. We call
19 that person the beneficial owner, has to be a
20 human being. And so the CRS is a way to
21 identify that human being that's hidden and
22 share that information with our partners.

23 As mentioned in our brief blurb, one of the
24 major holes in the system is the United States
25 is currently not participating and has its own

1 unilateral regime. Not the legislation but it's
2 known as the *Foreign Account Tax Compliance Act*,
3 *FATCA*, and they're kind of collecting
4 information about other companies. Like all the
5 roughly 1 million plus US citizens living in
6 Canada as of 2014, we ship all their information
7 to the IRS, but the US because of its current
8 political situation has not agreed to
9 participate in the global program; hence, it
10 doesn't give Canada any information. So it's a
11 one way process. We give them stuff and they
12 don't give us stuff in return.

13 Q I'm going to push this forward a little by going
14 to page 18 at the bottom, please. Madam
15 Registrar, even if we might bring up that
16 discussion. There we go, "Necessary Elements
17 for the AMLI." We've covered some of this
18 through the course of evidence already. But I
19 wonder, maybe I'll start with Mr. Clement, if I
20 might, if you could comment on some of these
21 principles that are listed at the bottom of that
22 page and then on to the next page as important
23 principles to take into account with respect to
24 the way the AMLI would be structured and put
25 into play. I think you're muted, sir.

1 A (GC) Sorry, my apologies.

2 Q Don't worry. You're by no means the first in
3 our Zoom hearing.

4 A (GC) Setting this up and going about it, I think
5 there has to be right at the start recognition
6 that this requires specialized skills and we've
7 got to get away -- and this is a fundamental
8 problem within law enforcement that they are
9 still designed under paramilitary frameworks and
10 resulting in promotion versus paid for skill.
11 So if you're going to get a unit and invest all
12 that time and money, you want to have people
13 that have longevity and the proper skill set
14 going in. You need to have these people that
15 are as I said going to be there for a long term.
16 And then what you want to have is an allocation
17 of positions or full-time equivalents that are,
18 as I said, concentrated in this and are allowed
19 to expand their abilities through training,
20 et cetera. Work within an integrated unit and I
21 go back to when we first formed the integrative
22 proceeds of crime units in the RCMP, they were
23 true partnerships at the start, at least some of
24 the units were. The ability, they have Canada
25 border service agents there. We did have -- and

1 with appropriate parameters we did have tax
2 working with us, from the investigative side,
3 but we respected 241 of the act. We brought
4 in -- and this is why we've broken out the
5 Fusion Centre that there would be forensic
6 accountants and you want to have -- but this is
7 a provincial unit, so the provincial body wants
8 to be able to work very cohesively with all the
9 municipal partners and obviously because RCMP
10 does a preponderance of the policing in the
11 province, RCMP has to be committed to this as
12 well. I'm not talking from the federal point of
13 view, but from the federal and municipal
14 resources that are being paid by the province,
15 they have to give a commitment and not rely on
16 direction out of headquarters in Ottawa. This
17 has to be a commitment to the province of
18 British Columbia. There needs to be, and I
19 agree, Jeffrey mentioned it and I agree with
20 him, I think there has to be a legislative basis
21 for this because it's the only effective way
22 you're going to do it. If you set it up like we
23 have, and I have witnessed time and time again,
24 you know, a collection of police agencies under
25 one umbrella for a period of time, you're going

1 to have to resolving door syndrome, I can tell
2 you that, where the investigators are going to
3 be bouncing back whether it be border services
4 or regardless of where they are going to be
5 bouncing back to their own units and you're
6 going to be constantly in a training mode. The
7 accountability. I really believe that -- and
8 when they set up the integrated proceeds of
9 crime units in '96 and thereafter the value
10 where they were so successful, there was fence
11 funding and direct accountability with the
12 report having to go to treasury board every
13 year. At that point I think they were highly
14 effective. The same thing has to apply here.
15 This money has to be a held accountable and the
16 managers that are there needs, very much like a
17 CEO of a company, has to be able to go before
18 the province and explain what that money and the
19 effectiveness of that money. And I think that's
20 what keeps them honest and keeps them effective.
21 Q Some of the accountability measures that are in
22 that second-last bullet that we see on the
23 screen include, proposed here, putting this
24 agency under the purview of the provincial
25 auditor general's office. Second annual

1 reporting mechanism back to the legislative
2 assembly?

3 A (GC) Correct.

4 Q All right. And beyond that I see in the next
5 bullet point subject to review let's say
6 five years but a periodic review mechanism that
7 is there?

8 A (GC) It's important to have that periodic
9 review, yes.

10 Q Let me turn to the next heading down on the
11 page, "Fusion Centre Capacity and Functions,"
12 starting with "Intelligence." Mr. Clement,
13 would you speak to that and then segue in, if
14 you would, to technology centre of excellence
15 which we have touched on.

16 A (GC) As you know, the Criminal Intelligence
17 Service Canada and they have the ten provincial
18 bureaus, they do a great job of collecting
19 intelligence, but I think it has to be an
20 intelligence unit within the Fusion Centre that
21 is very focused on creating actionable
22 intelligence. They can liaise then with the
23 Criminal Intelligence Service British Columbia.
24 They have to -- we have to create a mechanism
25 they can liaise with FINTRAC. That has to be

1 done legislatively and they've got to be in a
2 position to liaise with other units across the
3 province. By doing that you have still kept
4 them away from the actual investigative side.
5 They are able then to put together I think a
6 report that establishes a stepping ground for an
7 investigation. And that's where going in then
8 to the investigative side between the prosecutor
9 and the individual in charge that assigns out
10 the investigations, the actual intelligence can
11 be reviewed from an investigative standpoint
12 from a prosecutorial point of view and looked at
13 is it going to lead to an effective
14 investigation and if the decision is taken it
15 probably will not. Then you can take that and
16 say is there -- then turn it over possibly to
17 the civil side and say, is there a potential
18 civil action? That keeps that silo that you
19 need for this particular case and it also
20 becomes highly effective, in my view, and
21 ensures that when you do an investigation you're
22 going to have success.

23 Q Let me turn on to the --

24 A (GC) Pardon me, I'm sorry.

25 Q No, I just heard an echo. I don't know if

1 someone else was starting to speak. I'll carry
2 on. Let me go to the next page under "Forensic
3 Accounting." Dr. Cockfield, I'll turn to you.
4 There's a list here of forensic accountants and
5 in the subheadings there tracing net worth
6 analysis expert witness or all different roles
7 that have been identified for forensic
8 accounting within this Fusion Centre entity.

9 A (AC) Yeah, you know, it takes a lot of skills to
10 hunt down these global financial criminals. I'm
11 trained as an accountant and I'm a tax lawyer,
12 and I tell you even after a couple of decades I
13 still have an awful hard time figuring out what
14 is taking place, but of course there is this
15 professional body of forensic accountants who do
16 this for a living, and in particular they are
17 useful as you mentioned, Mr. Martland, for the
18 net worth analysis sometimes conducted by the
19 CRA. You'll see some young guy with a Lambo, a
20 Lamborghini, cruising down the streets of
21 Vancouver, and he doesn't have a job. So, you
22 know, then the accountants start digging to try
23 to figure out what has happened. And there a
24 federal body that regulates the forensic
25 accounting management group that regulates

1 forensic accounting and so we thought they ought
2 of course to be both federally and provincial be
3 embedded within this technology centre of
4 excellence.

5 Q That's very useful. Your comment just under the
6 bullet points that we see there, request
7 reference to FAMG and the comment is:

8 "As a matter of policy design, the Fusion
9 Centre will need to explore secondments
10 from FAMG. Building an in-house capacity
11 in forensic accounting is challenging."

12 Among other challenges is the feature of
13 salaries and the lure of other employers that
14 one has to bear in mind.

15 A (AC) The longer I do research in the area I'm
16 becoming more convinced that -- and, you know,
17 Garry and Jeffrey worked in this world, that
18 bureaucratic hurdles explain a lot of the lack
19 of progress in our country. I'm an Ottawa boy.
20 I grew up with lots of bureaucrats and there are
21 all these perverse incentives. So if you're an
22 auditor at the CRA maybe you don't want to
23 create waves and you want to move to another
24 federal agency. And as Jeffrey mentioned, we're
25 not -- you know, the province of

1 Bahamian immigrant to Canada, then I will -- you
2 know, I'm going to stick with that file and try
3 to learn financial crime because it really does
4 take decades and decades of work, yet incentives
5 within the bureaucracy go against that.

6 Q The bottom of that page refers to asset
7 management. Mr. Simser, if you could discuss a
8 little bit about the asset management feature or
9 role that is described here.

10 A (JS) Sure. I mean, this is a history lesson
11 really. I don't won't spend much time on it.
12 But in the 1990s in the US federal system they
13 expanded the use of forfeiture, particularly
14 civil asset forfeiture, and they were the
15 subject of numerous high-risk audits, reports
16 from the GAO, which is the government
17 accountability office of Congress. Really all
18 of those reports and audits focused back on poor
19 asset management. They would seize a car and
20 then two years ago -- two years later no one is
21 really watching it, they spent a ton of money on
22 storage and there was a tree growing out of the
23 middle of the car. What that did was it
24 actually undermined the credibility of what they
25 were trying to do, what law enforcement were

1 trying to do, which is to take the assets away
2 from bad guys, and in the end my own view is
3 that's part of what led in 2000 to CAFR, which
4 is the *Civil Asset Forfeiture Reform Act*. It's
5 not the only thing, but I think it's an
6 important thing. So it's just one of those
7 things, it's a caretaking thing, but you need to
8 pay attention to it very carefully and the
9 federal government is very aware that they have
10 an SPMD cease property management directorate,
11 and the provinces all in the civil forfeiture
12 space are very well aware of that. As well and
13 it goes into everything from not just the asset
14 management, but even pre-seizure takedown. Say
15 if it has four legs and it defecates you
16 might not want to seize it just because it's a
17 massive problem for you later. You really need
18 to think through what your choices are when you
19 working in this space.

20 Q Okay. I'll make sure the Commissioner puts that
21 on his list of potential recommendations.
22 Dr. Leuprecht, I think you might have something
23 to add.

24 A (CL) I just wanted to echo at point that Garry
25 made and tie that in with a point that Art and

1 Jeff just made. Why do we not have these
2 capacities in uniform? It's because the
3 uniform -- the paramilitary structure means to
4 get basically a higher pay you need to rise
5 through the ranks and get promoted. And so it
6 means you can't recruit accountants because the
7 entry level pay is too low, and so to keep them
8 and to bring them into this enterprise with the
9 qualifications that you're looking for they need
10 to come in as a civilian capacity. So you need
11 to figure out how do you get certain skill
12 sets that you're not going to get in the way law
13 enforcement is currently set in up it uniform
14 because you can't recruit them or you can't
15 retain them. And so these two points that we
16 just discussed I think really gets at the heart
17 of understanding why we laid out the structure
18 that we did to make sure you can get all the
19 skill sets that you actually need within the
20 constraints within which both the civil service
21 and law enforcement currently operate.

22 Q Is this part of the rationale for needing to
23 have a new and sort of dedicated and newly
24 designed body or institution or agency as
25 opposed to trying to wedge this under the

1 umbrella of an existing probably bureaucratic
2 structure, whether that's police with the sort
3 of march through the ranks and the way that
4 recruitment and retention is handled?

5 A (CL) Yeah, most of these entities are kind of --
6 they kind of grow in an evolutionary fashion
7 over time. And then you realize you have all
8 these coordination problems that arise and that
9 you can't subsequently fix. So what we tried to
10 think about here is what are all the problems
11 that you're going to run into and how do you
12 design it from the outset in a way that tries to
13 mitigate the many challenges that are going to
14 arise. So the big advantage here is you can
15 actually think through within the constraints
16 that we currently have how you optimize on the
17 public administration side and the policy side
18 the structure of this particular entity. And we
19 might add that in BC you have a comparative
20 advantage not just in being able to build this
21 sort of from scratch within the constraints that
22 we have, but of course BC is the most active
23 province with a provincial policing contract
24 with the RCMP in the way it engages and directs
25 that particular contract. So there's already a

1 lot of precedent of BC actually doing this type
2 of work in terms of making sure it gets -- it
3 optimizes in terms of the resources that it
4 invests for the return that it is looking to
5 achieve. And so it's going to require very
6 active investment and thinking, and I think this
7 is where Art mentioned David Eby I think really
8 understands this component.

9 MR. MARTLAND: I'm just looking at the clock.

10 Mr. Commissioner, my math is that if I'm
11 finished in about ten minutes we're on schedule,
12 so I hope that holds to be true.

13 Q As a result of that in part, I don't propose to
14 cover every single point. We have the benefit
15 of your report. But there's a few points that I
16 would like to move through seriatim now. Let me
17 start if I might please with page 22. Madam
18 Registrar, if we could have that. And then
19 you'll see there the heading 8.8 "SAR Review
20 Teams." Dr. Cockfield, I know we have had some
21 discussion about SAR, Suspicious Activity
22 Reports. If you could please speak to this and
23 then in particular just to frame my question at
24 the bottom of that page, there's a
25 recommendation in the last paragraph that the

1 Fusion Centre should create a project pilot with
2 FINTRAC to replicate the SAR review team
3 concept. Could you explain what that is,
4 please.

5 A (AC) As we mentioned before under federal law
6 FINTRAC only collects Suspicious Transaction
7 Reports. However, if you look at the definition
8 and speak to people at FINTRAC it's a fairly
9 broad definition. Some argue it allows
10 activities, but in any event the US and other
11 FIUs look more broadly not just like at every
12 \$10,000 transaction, so that's the STR, but
13 let's say some shady character comes into the
14 bank every day with \$8,000 of cash in a brown
15 paper bag, well, again, you know, there's an
16 argument that can already be disclosed but we'd
17 like clarity on that. So we would broaden the
18 disclosure to include these Suspicious Activity
19 Reports and then you know following up as
20 mentioned in our report projects like Project
21 Shadow and Project Protect, we would hope that
22 FINTRAC would both be combined with a private
23 sector entities like reporting entities like
24 banks and maybe partner up with law enforcement
25 and federal agencies like FINTRAC to do an

1 overall better job of assimilating all of this
2 information, transforming it from information
3 quantity to information quality.

4 Q I'd like to turn to page 23, 8.9 "private
5 actors." There's a description there I'll read:

6 "In 2015, the UK piloted the Joint Money
7 Laundering Intelligence Task Force, or
8 JMLIT. It brings together law enforcement
9 and national security personnel;
10 regulators and tax authorities; most
11 importantly, private actors, including 40
12 financial institutions (banks, post
13 office, MoneyGram ... "

14 Et cetera. I don't know, Mr. Simser, if you
15 might be well placed to speak to that JMLIT
16 model and the relevance for BC.

17 A (JS) So I'll start maybe. The idea here is
18 that, you know, I think the commission has
19 already heard about some of the experience with
20 JMLIT in Britain, and one of the fascinating
21 things to me was that there were a whole bunch
22 of students living in the UK. They were
23 studying abroad and they were all remitting as
24 part of a value transfer system back small
25 amounts of money. That was identified at JMLIT

1 because financial institutions were seeing these
2 patterns none of which of themselves made sense,
3 but when they got together around a table and
4 all talked about it, they realized it was
5 something else kind of going on. And that's the
6 notion here and it's like Project Protect. It's
7 sort of bringing people together, someone who
8 understands beyond the bare filing of an STR,
9 someone in the financial institution says, this
10 isn't quite right. And then what you need to do
11 within that construct is have some sort of a
12 safe haven. Because of course bankers have a
13 fiduciary duty to the client. They're worried
14 about privacy. If they want to speak freely
15 about their banking client, they want to make
16 sure they're not going to sued later. And there
17 are ways to do it; there are ways to do it right
18 now under the *Criminal Code*. But if you were to
19 pilot something like this you could create that
20 safe haven and then you could have those
21 discussions and everyone comes to the table with
22 their own authority and their own information
23 and then you come together and figure out what
24 to do with any particular problem.

25 Q I'll move, please, to page 25 where the

1 discussion turns to the IET integrated
2 enforcement team. And at the bottom, towards
3 the bottom of that page there's a discussion
4 about the structuring of the IET and drawing
5 on -- and there's much greater detail in the
6 appendix, dealing both appendixes 1 and 2, I
7 think, picking up on discussion about the
8 Ontario provincial asset forfeiture unit model.
9 But maybe, Mr. Simser, I don't know if you're
10 the best place to lead on that, but to speak to
11 the relevance of the Ontario model and how that
12 might inform the structuring of the IET proposed
13 here.

14 A (JS) Sure. I'll give you a concrete example.
15 So one of the things that if you're in this
16 business and say you're trailing a drug dealer
17 they are going have at some point bags of cash.
18 And that sounds like a simple thing to deal
19 with, but it's not. The courier is likely to
20 have no awareness of what is even in the bag and
21 what he's doing with it. And so you need
22 expertise. You need people who understand what
23 a dog is sniffing if a dog alerts to the bag.
24 You need people that can give you expert
25 testimony on how money is typically bundled and

1 packaged and why this isn't the way a bank would
2 bundle and package the money. It's a very
3 narrow and simple example. But really, and I
4 think Garry mentioned this before too, you
5 really need specialized skills. This isn't like
6 the beat cop who does the traffic and the
7 impaired charges. You really need specialized
8 skills so that you understand what you're
9 seeing, you understand how it fits into a
10 broader picture of money laundering activity.
11 And so that's the idea. And PATHU [phonetic] in
12 Ontario is a terrific unit. It's largely OPP
13 led, but they bring in people from all over the
14 Durham region, Peel Regional Police, Toronto
15 Police Service, and they focus on their
16 expertise, they do a ton of training, they do a
17 ton of talking. I've talked to the group
18 a millions times; they're fantastic. So you
19 generate ideas. You get to understand that you
20 saw something in Windsor, hey, that actually
21 happened in Ottawa too and it also happened in
22 York Region you figure out what the
23 commonalities are and then you build your
24 expertise from there.

25 Q Let me move to the page 26, please. There is a

1 heading at the bottom of that page "Assets in
2 the Criminal Law Sphere" and then there's
3 discussion about how the *Criminal Code* as well
4 as CDSA allow for forfeiture upon -- that's part
5 of a sentencing I take it, Mr. Simser, what's
6 described there.

7 A (JS) Yeah. That is not the only way that you
8 can deal with things under the *Criminal Code*,
9 but it is the primary way. So you convict
10 someone and then at sentencing or after
11 sentencing then you deal with either
12 offence-related property or proceeds of crime
13 and I think we spoke earlier about fines in lieu
14 of forfeiture as well. Those all kind of fit
15 into the thing and then there's a structure
16 within the *Criminal Code* and the controls drugs
17 and substances act that allow for the restraint
18 of the assets at the start, the management of
19 them through the process and then the forfeiture
20 following conviction.

21 Q Panel members, I think I'd do well to hand the
22 baton to my colleagues who will have some
23 questions for you. But before I do that,
24 appreciating that there are more than a few
25 topics and issues that I made the call not to

1 ask questions about with an understanding of the
2 mandate of the Commissioner and the work that
3 we're doing and the close relevance of the paper
4 that you've prepared and the model that you've
5 outlined in this report, are there particular
6 additional comments or considerations that you
7 would like to draw to the Commissioner's
8 attention before I turn you over to my
9 colleagues?

10 A (GC) One I'd' like and I think is essential that
11 the province has to understand, and this is
12 where it's paramount, is that the provincial
13 unit does a great job or a provincial unit will
14 do a great job within the confines of the
15 province of British Columbia. The reality is
16 transnational organized crime crosses
17 international boundaries. And in order for it
18 to be highly effective, the RCMP or some federal
19 organization has to be tied in in some way to
20 your provincial unit because that is the only
21 way that you're going to be effective
22 internationally in going after transnational
23 organized crime. So some of the announcements
24 that have been made in the RCMP or by the
25 Government of Canada, I can tell you

1 systemically are going to be a failure and we
2 really need to do a gap analysis. And if I can
3 make any strong recommendation, there has to be
4 a firm commitment on the part of the federal
5 government that they own this problem as equally
6 as the province does but probably more so and
7 they have to make a firm commitment to do what
8 is required.

9 Q You're saying in part BC can't go it alone?

10 A (GC) Precisely, you just can't.

11 Q Dr. Leuprecht, Mr. Simser, Dr. Cockfield, any
12 last general comment, or shall I conclude there?

13 MR. MARTLAND: Mr. Commissioner, I think that does
14 complete my questions. Thank you.

15 THE COMMISSIONER: Thank you, Mr. Martland. I'll now
16 call on Ms. Chewka on behalf of the province,
17 who has been allocated 20 minutes.

18 MS. CHEWKA: Thank you, Mr. Commissioner. In light
19 of my friend's questions the province has no
20 questions for this panel.

21 THE COMMISSIONER: Thank you, Ms. Chewka. I'll turn
22 then to Ms. Gardner on behalf of Canada, who has
23 ban allocated ten minutes.

24 MS. GARDNER: Thank you, Mr. Commissioner.

25 **EXAMINATION BY MS. GARDNER:**

1 Q Panelists, can you all hear and see me okay?
2 I'm seeing nods. Thank you. I just have a few
3 questions for you today. I just want to take
4 you through a few pieces of your report just to
5 ensure that some aspects of it are as factually
6 accurate as possible. So I think we can move
7 through this quite quickly. Madam Registrar, if
8 I could ask you to bring up the panelist's
9 report again. Thank you. If you could go to
10 page 28, please. Thank you.

11 So I just want to focus here on the second
12 full paragraph and I'm going to read a sentence
13 here about tax evasion, so perhaps,
14 Dr. Cockfield, this might be a question for you
15 to field. So the sentence the second sentence
16 in that second paragraph reads:

17 "After conducting an investigation, the
18 CRA's investigations division refers the
19 matter (or not) to the Department of
20 Justice for prosecution."

21 So I'm just looking to clarify here,
22 Dr. Cockfield, would you agree that in fact it's
23 the Public Prosecution of Service of Canada who
24 would handle tax evasion prosecutions?

25 A (AC) Yes, that is the proper federal agency.

1 Q If we could move to page 11 of the report,
2 please. So I'm just looking at the final
3 paragraph at the very bottom here. And,
4 Mr. Simser, I might address this to you, though
5 of course anyone else is welcome to jump in if
6 I've passed you the ball and it's not yours to
7 hold. In this final paragraph you're talking
8 about FINTRAC's regulatory role. And just
9 looking at the third sentence it says:

10 "If a statutory test is met, FINTRAC may
11 disclose information to law enforcement
12 and tax authorities."

13 So just to ensure we're clear here, Mr. Simser,
14 would you agree that once this statutory test is
15 met in fact FINTRAC shall or must disclose the
16 information to law enforcement?

17 A (JS) Yeah, that's correct. It's subjective at
18 the point which the analysis is conducted, but
19 you're right, if a FINTRAC analyst comes to the
20 view that there's reasonable grounds to believe
21 this is information necessary, for example, for
22 a money laundering investigation, yeah, they
23 shall put it out and then it's useable by
24 whoever the information transmits to.

25 Q Okay. Madam Registrar, I appreciate I'm having

1 you move around here, but can we go to page 25
2 of the report, please. And we'll just move to
3 the bottom of the page. Perfect. That's great.
4 So in the final paragraph there's a brief
5 reference there to the CFSEU in British Columbia
6 and the Organized Crime Agency. And there's a
7 phrase there that says:

8 "The CFSEU in British Columbia took over
9 OCA, the Organized Crime Agency."

10 Now, I'm not sure who might be best placed,
11 perhaps Mr. Clement, but I'm just hoping to
12 clarify the use of the term "took over." You're
13 aware I'm sure that the OCA still exists; is
14 that fair to say?

15 A (JS) I'll answer that. Yes. The OCA still
16 exists. It's still a commissioned police force.
17 I'm not sure what the right word is. And the
18 functions then fold as I understand it, counsel,
19 the function folded into the CFSEU family, if
20 you will. So but it does still exist as and it
21 could be commissioned as an independent police
22 force. It has that status at law in
23 British Columbia.

24 Q Okay. Turning now to page 7, please, Madam
25 Registrar. Looking here at the third full

1 paragraph that starts with "there is a
2 structural problem." And looking specifically
3 at the third sentence in that paragraph and
4 perhaps I'll just read it out. I'm looking to
5 clarify the use of the word "choose" at the end.

6 So it says:

7 "Financial intelligence units have the
8 incentive but they lack the data – since
9 they seen only suspicious transactions and
10 not the patterns of normal transactions
11 against which to contrast them and they
12 see only the suspicious transactions that
13 financial institutions choose to give
14 them."

15 So, Mr. Simser, perhaps this is a question for
16 you or maybe someone else, but I'm just looking
17 could you expand on the use of the word "choose"
18 in this sentence.

19 A (JS) So I can start and maybe Art or Christian
20 can speak to this as well. So a CTR is a pretty
21 simply process for a financial institution.
22 It's a transaction, a wire transfer over
23 \$10,000. It needs to be reported on. A
24 suspicious transaction reporting has some
25 discretion that vests with whatever the

1 reporting entity is as to whether they make the
2 report or not. They are held to standards;
3 FINTRAC does set all kinds of guidances for them
4 and they are meant to know their customer before
5 they make that choice about whether something
6 fits the STR definition or not. But there is
7 some element of agency in terms of it's not
8 simply any transaction that gets reported out.
9 There's some agency within the regulated entity
10 to make the choice to make the report.

11 (GC) If I can just add one thing. I've been
12 involved in doing a lot of independent reviews
13 and I've worked with some of the financial
14 institutions, and one thing I learned, without
15 naming any of the institutions, for the longest
16 time they work to the level of the regulatory.
17 In other words, their whole systems were based
18 on the level of what they expected would fall
19 from the regulatory, other than the required
20 transaction, your CTRs, et cetera. So I don't
21 think we should -- I think our point that is
22 going being made is very factual and we need to
23 look at that not all of the information in a
24 proper way is probably flowing because there is
25 a discretionary on the STR side.

1 (CL) And it is not just discretionary by the
2 institution. I have two colleagues who have
3 done extensive research on this -- this is
4 public source I can provide to you -- that shows
5 that it is highly subjective as to what gets
6 reported, how it gets reported and when it gets
7 reported on that threshold. So there's an
8 institutional dimension, but there's an
9 individual agency dimension and that is it
10 partially related to the fact that there's no
11 uniform standards or training on how this type
12 of reporting is done. So "choose" is very much
13 the operative word here.

14 Q Okay. Thank you. And so I take it then from
15 your collective answers that what you're
16 acknowledging here is there is a responsibility
17 on the part of the reporting entity to determine
18 whether a transaction meets a certain threshold,
19 but once that threshold is met reporting is not
20 voluntary, it is then mandatory. Is that
21 accurate?

22 A (JS) Yeah, that's correct. I mean, and there's,
23 you know, FINTRAC has a regulatory role to make
24 sure that -- how well they play it is a
25 different question, but they have a regulatory

1 responsibility to make sure that the reporting
2 entities are in fact making the right decisions
3 and they have audits and all that kind of stuff.
4 All of that system is meant to do that. But
5 you're right, if as a regulated entity I come to
6 the view that I must make the report, I can't
7 sorts of unmake that decision. I do have to
8 make the report. Once I reach that it's
9 mandatory.

10 Q And you mentioned briefly there the sort of
11 compliance examination aspect and so as part of
12 this requirement for reporting there are also
13 potential consequences for failing to report,
14 including administrative monetary penalties. Is
15 that accurate?

16 A (JS) Yes, that's correct.

17 Q Madam Registrar, if we could move to page 48 of
18 the report, please. This is part of appendix 3.
19 I believe it's page 2 of appendix 3. And I'm
20 looking at table 6 which is at the bottom of
21 page, please, Madam Registrar. So table 6 here
22 is titled "FINTRAC Intelligence Disclosures By
23 Recipient and Total Unique Disclosures" and I
24 want to briefly look at this table and describe
25 for you my understanding of it and just see

1 whether it is that we agree about what this
2 table represents. So when I look at this table
3 I'm looking specifically at the left-hand
4 column, which is titled "Recipient." I see
5 there RCMP municipal police and other entities
6 advised as recipients. And then there's a
7 number of figures attributed to certain time
8 periods. Madam Registrar, if we could scroll to
9 the top of the next page which has the bottom of
10 this report. We see there the second row from
11 the bottom is titled "total (unique
12 disclosures)" and so to me this I'd suggest that
13 this indicates that this is showing the number
14 of unique intelligence disclosures in each time
15 period which suggests that some of those
16 disclosures were sent to multiple recipients
17 which is why the numbers don't all align. Again
18 I'm not sure who exactly to put this to, but
19 would you agree with that description of this
20 table and what it represents? Perhaps I'll pick
21 Mr. Simser, perhaps unfairly, but whoever would
22 like to jump in?

23 A (JS) I actually think Art or Christian are
24 probably better. My math skills are
25 underwhelming.

1 (CL) I think the -- it's already reflected
2 in footnote 4 that goes with the title of that
3 table.

4 Q Right. Yes, that some disclosures are sent to
5 multiple recipients. I suppose the aspect I'm
6 trying to get at is my interpretation of this
7 table is that this shows the number of
8 intelligence disclosures that FINTRAC has
9 disclosed to the listed recipients. Does that
10 accord with your understanding of the table?

11 A (CL) So the data was this is data that was
12 generated by FINTRAC and not by us. And so it
13 uses their terminology, but I think that is a
14 helpful qualifier on the way that information
15 was presented and disclosed.

16 Q A helpful qualifier, meaning that this would
17 have been FINTRAC disclosing intelligence to
18 recipients based on your understanding? I
19 appreciate this isn't data that you collated?

20 A (CL) Based on my understanding of the data that
21 was presented, that is correct. Art, did you
22 want to weigh in?

23 (AC) That was my interpretation of the data
24 as well. It's consistent with counsel's views.

25 Q Okay. And, Madam Registrar, if you could scroll

1 up just briefly to the top of this table. So
2 for example, then, in that top row it would be
3 the case that this table suggests that in the
4 2012/2013 period FINTRAC disclosed 580
5 intelligence disclosures to the RCMP?

6 A (GC) That's correct.

7 (AC) But -- you know, my co-panelists may
8 correct me. My understanding is it's not
9 actionable, what we call actionable
10 intelligence. They are just coughing up
11 information like they've got a cross border
12 transfer of over 10,000, maybe it has to do with
13 a real estate transaction, and they send that to
14 some agency, but they don't necessarily tell the
15 agency what exactly is happening. Nor do they
16 know themselves, FINTRAC. In other words,
17 they're just coughing up information. It may or
18 nor may not be useful.

19 Q Yeah, I think we discussed the threshold
20 earlier, so I think you're getting at that once
21 a threshold is met FINTRAC is then required to
22 disclose information to law enforcement?

23 A (JS) But there's not a qualitative measure
24 necessarily, so you could have FINTRAC -- a very
25 early FINTRAC disclosure example that was shared

1 to me by an Ontario police service went
2 something like target X is spending a lot of
3 money in the Niagara casino. And it's
4 impossible to know whether that's because target
5 X has a gambling problem and he's just a rich
6 person with a gambling problem or whether
7 there's something underneath that that might
8 actually pertain to money laundering. As the
9 police said to me, if we don't have anything in
10 our database about target X, I mean, what do we
11 do? Do we set up a spin and surveillance team
12 and so on so forth to try to find that target,
13 follow them, see where they go, see what they
14 do? Is there enough here to get any kind of
15 warrant? Probably not. So it's one thing to
16 talk about absolutely, there was a disclosure
17 there. I think it's another thing to talk about
18 what the qualitative, the quality of that
19 disclosure is in terms of actionable
20 intelligence. And that's part of what the
21 expert panel has talked to.

22 (CL) And I think this is part of the command
23 and control problem that we raised earlier.
24 That we have all this data but someone
25 ultimately needs to decide how are we going to

1 allocate resources in making sure you allocate
2 the right resources, the right capabilities and
3 the right capacities to the right problem in
4 order to -- so it's nice that we have all these
5 disclosures, but for instance this is something
6 I mentioned to National Crime Agency in the UK
7 has a deliberate triage process in the way it
8 goes about this that the current setup does not
9 enable either at the federal or the provincial
10 level.

11 Q Okay. Then would it be fair to say that you
12 agree, though, that current RCMP members would
13 be best placed to how they use the intelligence
14 provided by FINTRAC today?

15 A (GC) I'll weigh in on that one. Absolutely not.
16 Having run the unit, Ashley, I can tell you that
17 the problem with the FINTRAC disclosures and the
18 problem with the current RCMP the way it is even
19 when I had integrated units, you only have X
20 amount of resources and it's exactly what
21 Jeffrey was saying about, you've already got
22 very actionable intelligence that you're working
23 on, so we used to joke when the disclosures come
24 over and they went into a pile then into filing
25 cabinet because the reality of it was there was

1 very little could be done because you didn't
2 have the resources to do it. What we got to do
3 and I think the point that we're trying to make
4 is we've got to have some sort of a Fusion
5 Centre to look at this intelligence and have a
6 mechanism to liaise with FINTRAC so that we can
7 take it from what I would classify,
8 unfortunately, as massive overload of
9 intelligence and turn it into actionable
10 intelligence so Canada gets a full benefit of
11 the total cost what it is costing the taxpayer
12 of FINTRAC. FINTRAC does this tremendous job
13 based on their statutory requirements, but it's
14 failing Canada to be successful and enable us --
15 or enable law enforcement to do effective
16 investigations.

17 Q Okay. I see I'm running close to the end of my
18 time. Madam Registrar, if we could just turn
19 quickly to page 15, I will wrap up here. If we
20 could scroll down to the middle of the page. I
21 just want to take you to a sentence here about
22 table 6 because I'm not sure this sentence
23 presents the same meaning of table 6 as we just
24 discussed. So partway through that centre
25 paragraph on the screen here says in addition in

1 2019/2020 FINTRAC received roughly 2,000 unique
2 intelligence disclosures from the RCMP
3 provincial and municipal police, and it carries
4 on and at the end attributes those statistics to
5 table 6. Based on our conversation, would you
6 agree that in fact as we discussed table 6
7 presents data relating to intelligence
8 disclosures that FINTRAC provided to the RCMP
9 and the listed recipients?

10 A (AC) Ms. Gardner, that was my fault. It's a
11 typo and you're absolutely correct. It should
12 be -- we'll have to change that sentence.

13 Q Okay. And just moving on to the next sentence
14 just to ensure we have clarity here, I suspect
15 this is a typo as well, which is bound to happen
16 in a large report under time constraints. But
17 just the end of the next sentence there it's
18 referencing some stats about voluntary
19 information records and it says there's an
20 increase of 112 percent from 2020/2011. Would
21 that be 2010/2011 that is being referred to?

22 A (AC) Yes, that's another typo. Sorry about
23 that.

24 (CL) I appreciate your attention to detail
25 because, I mean, we generated this in just over

1 two weeks from flash-to-bang, so we did our
2 best.

3 MS. GARDNER: Yes. Very understandable under time
4 constraints. Thank you very much. Those are
5 all my questions.

6 THE COMMISSIONER: Thank you, Ms. Gardner. I'll turn
7 now to Ms. George on behalf of the Law Society
8 of British Columbia, who has been allocated
9 ten minutes.

10 MS. GEORGE: Thank you, Mr. Commissioner. Having
11 heard the direct examination we no longer have
12 any questions for this panel.

13 THE COMMISSIONER: Thank you, Ms. George. I'll turn
14 then to Mr. Usher on behalf the Society of
15 Notaries Public, who has been allocated
16 ten minutes.

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

18 **EXAMINATION BY MR. USHER:**

19 Q Just while we're talking about table 6, I am
20 wondering if those disclosures, are those
21 responsive or proactive? These are disclosures
22 by recipients. So those are, I would think -- my
23 understanding was that FINTRAC was in that sense
24 did not proactive disclosures but responsive
25 ones. Can you provide some clarity about that?

1 Any panel member is fine.

2 A (GC) Disclosures by FINTRAC, the disclosure you
3 see there after they have reached a threshold
4 they are compellable; they have to make those
5 disclosures by the regulatory statute.

6 Q So those are not in -- go ahead?

7 A (JS) I was going to say there's two kinds of
8 disclosures I think that FINTRAC makes. One is,
9 you know, they see something, they form a
10 reasonable belief it needs to be disclosed, even
11 if it doesn't have a context and they disclose
12 it. The other is where a police service, for
13 example, has given a volunteer information
14 report, we're looking at Mr. Blogs. We think
15 Mr. Blogs might be involved in money laundering.
16 Then FINTRAC analyst will go and look at what
17 they've got in the database and if they do see
18 something it's reactive; it's reactive to VIR
19 and then they will produce that. The difference
20 between the two is one just might be out of the
21 blue and they see this, say oh, maybe there's a
22 pattern and they disclose it. The other is
23 directly in response to effectively an inquiry
24 by law enforcement and that's the VIR process.

25 Q So table 6 is the responsive kind then? In

1 other words, again, perhaps you answered but I'm
2 not understanding. So table 6 is proactive
3 requests or responsive disclosure?

4 A (AC) Please note, as Christian mentioned, these
5 statistics were compiled by FINTRAC itself. So
6 we're also trying to interpret it, but my
7 understanding it's total disclosure, so that
8 would be the ones where they just automatically
9 send out the information, we've got a cross
10 border transfer of \$10,000 via the Bank of
11 Montreal, let's say. And the other one is where
12 there's some kind of discretion surrounding
13 definition of Suspicious Transaction Report and
14 so my understanding is those disclosures as
15 well, including the ones as Jeffrey indicated in
16 response to volunteer information records, I
17 think the term is, but every police officer I've
18 interviewed calls them voluntary information
19 reports. But anyhow.

20 Q Thank you. Just on a broader scope your report
21 is called "Detect, Disrupt and Deter," pointedly
22 not detect, disrupt, deter, prosecute and
23 punish. You focused on and your report, I
24 think, comments -- is that because you didn't
25 have time to look at that, the fact that you

1 there's just no possibility of improving
2 prosecution and punishment? I'm curious where
3 you went there because you seem to, like many
4 other presentations we've heard, be quite -- I
5 don't know what the right word would be, jaded,
6 cynical or perhaps overwhelmed by the complexity
7 of successful prosecution and judicial
8 sentencing. Can you comment on that.

9 A (AC) You know, in designing the regime we put a
10 lot of thought into thinking what would be the
11 most optimal way to respond to the challenges.
12 Actually I'm going to let Christian, you'd
13 probably do a better job answering this. Go
14 ahead.

15 (CL) I think the public and most people take
16 it for granted that we want to prosecute and we
17 want to punish. The challenge is those are the
18 two hardest things to do. They are most
19 expensive things to do. They are the longest
20 things to do. They require the most assets and
21 they require the most skill set for usually a
22 better than 50 percent sort of chance of
23 actually getting the outcome that you're hoping
24 for in terms of reasonable chance of conviction.
25 So I think while this is an important component

1 of the conversation, of course, I think
2 everybody takes that for granted. We were
3 trying to shift the conversation strategically,
4 thinking about before we can actually get there
5 we actually need to be able to detect these
6 transactions, which currently we've laid out all
7 the challenges around that. And then you have
8 the -- you have a whole host of other options
9 other than prosecute and punish that is the
10 disrupt components. Criminal is one element,
11 but there's many other ways to disrupt. And
12 then ultimately what you're trying to achieve is
13 not necessarily to lock people up. That is one
14 mechanism. But what you're trying to do is
15 ultimately deter people from engaging in this
16 type of activity to begin with and you want to
17 build a framework where people have the
18 confidence that the state is actively deterring
19 people from engaging in illicit activity. I
20 think the perception both domestically and
21 internationally based on the testimony that the
22 commission has heard is that Canada is not
23 actively deterring such activity. And the whole
24 point I think of the commission is that we need
25 a different strategy, so prosecute and punish is

1 sort of a broader -- is an outcome, but what is
2 it that wear trying to achieve and how are we
3 going to go about it and that requires a broader
4 perspective on the issue beyond prosecute and
5 punish. Now I'll let my colleagues weigh in.

6 (AC) So sorry, Jeffrey, you know, in the
7 design we just thought what does Canada do a
8 relatively good job at? What does BC, what does
9 the province -- and we're regulators. We're
10 bureaucrats. We can have rules, we can have
11 licences, we can have closure orders if
12 necessary. So we do a great job or at least a
13 decent job at that sort of regulation. Where we
14 have always fallen down, my research suggests,
15 is that the prosecuting complex global financial
16 crime, I'm convinced we don't have one
17 successful prosecution of offshore tax evasion
18 in the history of our country despite all of the
19 evidence over the decades. I'm in an argument
20 with the government. They can't show me the
21 evidence. I'm part of something called OCAC,
22 the offshore compliance advisory committee,
23 appointed by the minister of national revenue to
24 advise the government on its offshore regime.
25 And so the federal government put a billion

1 dollars more into audit enforcement over the
2 last few years. Maybe that will lead to further
3 successful prosecutions, but we just have to be
4 realistic. We're good at hunting people down and
5 finding them, but we do a lousy job, again, at
6 these complex financial crime prosecutions. And
7 it may be unrealistic to expect material change
8 in this area at least in the short or medium
9 term. Hence, the design that we came up with.

10 (JS) The only thing I would add to that is
11 if you want to get to successful prosecutions
12 and punishment, you need to do the kinds of
13 things that are recommended. Not saying that
14 our paper is a perfect panacea, but you know --
15 and Garry and I have been in this for a long
16 time, and you have to have the expertise and the
17 bandwidth to get on top of this stuff. And so
18 the whole proposal of the expert panel really is
19 to build that bandwidth, that expertise, that
20 ability, and if do you that properly what will
21 follow from it, if you've done it properly, are
22 successful prosecutions. It's not that we're
23 frightened of it; I think it's more recognition.
24 As Art said, we're not going this very well
25 right now. Well, there's a reason and here are

1 some ideas to get our head around how we might
2 change.

3 Q Do you have concerns -- I think it sounds like
4 proposals for massive data collection and
5 analysis might lead to a couple of things. One,
6 massive, even more problems with disclosure, an
7 issue you and others have raised. And also
8 massive concern for the public that somehow we
9 can't catch the criminal so now we're going to
10 collect data on essentially every Canadian
11 citizen.

12 A (AC) Certainly we're sensitive to the privacy
13 rule, but currently for instance in
14 British Columbia you have unlicensed money
15 services businesses, dozens, possibly hundreds
16 throughout your province, so there's no
17 regulatory regime to have somebody follow up and
18 close this place down for maybe engaging in
19 money laundering. And Peter German's report is
20 very clear on the lack of federal and provincial
21 resources that are currently being deployed in
22 this area. So that's a starting point. If we
23 can't even regulate things properly, well then
24 that's where we need to get our house in order.
25 Of course BC. Again in your favour you're at

1 least looking at the problems. The other
2 territories and --

3 Q Thank you. I see my time is almost out. Now,
4 you do recommend of course one new criminal
5 thing because you say the criminals maybe we can
6 catch and punish are people that attempting to
7 comply with the regulatory regime. You are
8 proposing new punishment, but it's not for the
9 money launderers.

10 A (GC) I think, Ron, in fairness, if you really
11 look at the report in the context and, you know,
12 there's nobody that doesn't wear this on his
13 sleeve like I do because I believe so strongly
14 we got to get it right. I really believe, Ron,
15 that what we tried to do, and we all
16 collectively had discussions on this, we
17 recognized and we looked at what the state of
18 the nation is today. And that includes the
19 province of British Columbia and it includes the
20 federal government, the RCMP. We recognize that
21 that is not going to be fixed overnight. The
22 RCMP has come out and talked about money being
23 poured in. Well, I can tell you having overseen
24 this organization, been on the ground floor, it
25 takes three to five years to become effective.

1 So what is it we can do effectively in the short
2 term, so as Jeffrey said that all of a sudden
3 coming out at the end we've got an effective
4 group of people that can put a case together
5 that is going to be able to be put before the
6 court and not be challenged all the way through
7 and thrown out as we've seen unfortunately with
8 a couple of major cases in this country and
9 lose millions of dollars in investigative time.
10 We've got to be more effective, and I hate to
11 say it, but if you really want to look at it in
12 its truest sense, we're starting over. And
13 let's accept we're starting over because we have
14 been a dismal a failure at what we have been
15 doing. So let's build something that we can be
16 proud of and it can be effective and efficient.

17 (CL) Mr. Usher, if I may, there's a strong
18 cultural ethnocentric normative sort of
19 assumption that you're making in the question
20 that you're asking which is that the state is
21 somehow the enemy of the democratic citizen.
22 And what we have is we have an interesting
23 difference in cultural perceptions of privacy.
24 When you go to Europe people are primarily
25 concerned about corporations and what they do

Garry Clement (for the commission)

Arthur Cockfield (for the commission)

Jeffrey Simser (for the commission)

Exam by Mr. Usher

1 with their data. When you go to North America
2 they are primarily concerned about what
3 government does with their data. And I would
4 say we've had especially since the adoption of
5 the charter a spillover effect from the United
6 States of this sort of perception that somehow
7 there's an unfettered right to privacy at any
8 and all cost to our society. And that is
9 ethnologically simply --- there has never been a
10 society with a unfettered right to privacy. And
11 I think what Art is suggesting is that from a
12 distributive justice perspective we have not
13 struck the right balance in this country. And
14 so simply saying that government should never
15 collect any data at any cost ever is simply not
16 an acceptable way to start this conversation.
17 And so that is I think what we're trying to get
18 at, that this can be done sensibly. We do it in
19 other areas. We've struck regimes that are
20 legal and constitutional. Let's ask ourselves
21 the harm that is currently being done relative
22 to the remedies that we are proposing in a
23 democratic constitutional framework.

24 Q Thank you. You perhaps have misunderstood my
25 personal point of view. I find much to agree

1 with in what you're saying. I appreciate your
2 passion on the topic.

3 MR. USHER: That is all my questions. Thank you.

4 THE COMMISSIONER: Thank you, Mr. Usher. I'll now
5 turn to Ms. Roos on behalf of the British
6 Columbia Lottery Corporation, who has been
7 allocated five minutes.

8 MS. ROOS: Thank you, Mr. Commissioner. We have no
9 questions given the evidence of the panel today.

10 THE COMMISSIONER: Thank you. Ms. Roos. Ms. Magonet
11 on behalf of the British Columbia Civil
12 Liberties Association, who has been allocated
13 20 minutes.

14 MS. MAGONET: Thank you, Mr. Commissioner.

15 **EXAMINATION BY MS. MAGONET:**

16 Q Can the panelists hear me? Excellent. So my
17 first question concerns one of the
18 recommendations in your report, and I'm not sure
19 who this is best directed to, so whoever feels
20 most comfortable answering feel free to take it.
21 But on page 9 of your report you recommend
22 limiting the use of cash either absolutely or
23 requiring mandatory reporting of transactions
24 above a threshold. And I just wanted to make
25 sure I understood this. Are you suggesting that

1 cash should be absolutely prohibited?

2 A (CL) I'll take that. I can let my colleagues
3 sort of jump in. I think that is ultimately a
4 political decision. Germany recently had this
5 conversation and there's a strong sense in
6 part because cash is an important component of
7 the cultural conversation within Germany. There
8 are other societies as we point out such as
9 Sweden and Iceland that have had different
10 conversations around this. What we're pointing
11 out is that I think in the 21st century there
12 are very few people who for legitimate reasons
13 have requirements for \$50 and \$100 bills, and so
14 one of the options is if you're not going get
15 rid of cash entirely we know that much of these
16 bills essentially make life easier for money
17 launders and for criminals because they can
18 package their value and move it much more
19 effectively and efficiently. So perhaps there
20 is an opportunity to have a conversation around
21 what is it that we can do in terms of continuing
22 to have cash and cash transactions for those
23 people who would like but perhaps presents an
24 opportunity to reduce the types of bills that
25 are in circulation. Australia recently had a

1 political conversation about this and I think
2 that conversation was -- did not go the way the
3 state had intended because it was broadly sort
4 of broadly hijacked. But we need to have an
5 intelligent conversation about what the role of
6 cash in the 21st century for legitimate purposes
7 still is and where that boundary ends.

8 (JS) I'd add two things to that. I agree.
9 One is India has rather disastrous effort to
10 change the use of currency. One of the
11 interesting things that I was reading just
12 before we came on as a panel is there is a group
13 called Payments Canada and it observed that
14 since the pandemic began in May of last year
15 62 percent of Canadians use less cash and
16 53 percent of Canadians use more contactless
17 payment methods. One of the points I think of
18 the expert panel here is that we need to be
19 thinking in an adaptive way to how things are
20 changing and so there are certain places, if
21 you've travelled in Nordic countries there are
22 certain merchants who only want contactless
23 payments. Not all of them for sure, but if
24 you're in Iceland or you're in Sweden there's a
25 lot more payments that are done that way than

1 through cash. So part of it as well is just
2 thinking through what the future might look like
3 in being adaptive to that in what we do.

4 (AC) I'd like to add, Ms. Magonet, I hope
5 I'm pronouncing your last name correctly, that
6 you know, this is not an integral aspect of our
7 report. Clearly Canadians would be -- this
8 conversation would be an important one, but
9 there are many Canadians would be opposed to
10 moving towards a cashless society. So we're
11 just raising this issue that the concern so much
12 financial crime is conducted via cash because
13 its anonymous. You know, almost as good as
14 bearer shares. And so we're just putting that
15 out there, but certainly for our overall
16 proposal to go forward, it's not needed to
17 curtail the use of cash.

18 (GC) If I could add one more thing, Jessica.
19 I think we have to look at in terms of if we're
20 having this conversation I guarantee ten years
21 from now, it's going to be a very different
22 conversation. With cryptocurrencies and with
23 this pandemic, it's taught people that you don't
24 need to work with cash. I believe that it will
25 be a total different conversation in a decade

1 from now.

2 Q Thank you. I just have a followup question on
3 this point and recognizing that this isn't
4 integral to your proposal but it's a
5 possibility. I was wondering if the panelists
6 are aware that in Canada racialized, poor and
7 low income Canadians are less likely to have a
8 bank account and more likely to work in sectors
9 that deal with cash and if you've considered the
10 implication of this proposal for those
11 marginalized communities?

12 A (GC) Jessica, I work in and I know Christian and
13 we all did, but I've done work for the last nine
14 years in the money service business sector. In
15 fact I was the one that brought forward about
16 all the Iranian underground MSBs that were in
17 existence across Canada and none of them
18 registered. So I'm very familiar, I've worked
19 with a lot of the marginalized communities and
20 but I believe that's part of a systemic problem
21 in this country where we need to do a better job
22 with our marginalized communities and help them
23 get banks. The solution is -- well, we got to
24 keep all this currency and not look at what the
25 future might bring because they can't get a bank

1 account. I think the solution is why aren't
2 they getting a bank account and what can we do
3 to help them. That's the only suggestion I
4 would make.

5 (AC) Increasingly the conversation about
6 these marginalized communities is how to bring
7 them into the real economy. The main point that
8 we obsess about in my role is about how do you
9 get them to file a tax return. They can't get
10 even get CERB benefits or pandemic benefits when
11 they don't have a bank account. Having said
12 that, you're absolutely correct. It is a real
13 area of concern and that's why I don't think
14 we're going to move to a cashless society any
15 time soon.

16 (CL) There is strong ethical dimensions to
17 populations that are unbanked or underbanked and
18 I think no one in any way wants to minimize
19 those. But the cash situation also often puts
20 people into perilous positions where they end up
21 with jobs or in situations where they, for
22 instance, do not enjoy the legal protections,
23 where they end up not paying taxes, don't file a
24 return, and then are not -- don't benefit from
25 the other elements that come with being in a

1 more regularized relationship. And so I think
2 part of what we want to look at is the broader
3 dimension of why people are unbanked and
4 underbanked and how we can regularize their
5 financial relationships to maximize their
6 benefits from the Canadian economy. So I think
7 that shouldn't distract from I think as we point
8 out the conversation about cash is not integral
9 to what we have put forward in this report in
10 terms of curbing and curtailing the massive
11 consequences of money laundering, the
12 deleterious consequences for in many cases those
13 same populations in terms of crime and other
14 activity by which they are directly affected and
15 I think the positive benefits of our proposal in
16 particular for many of the most vulnerable
17 people in our society.

18 Q Thank you. My next series of questions concerns
19 your recommendation that Canada adopt
20 legislation similar to the *RICO* Act in the
21 United States, and so while you make this
22 recommendation you also acknowledge in your
23 report that this could raise constitutional
24 concerns due to the fact that *RICO* combines
25 criminal sanctions with civil remedies. Is that

1 a fair characterization of your report?

2 A (JS) So I'll take this on. So there's three
3 elements to *RICO*, two of which are civil, one of
4 which is criminal. And so one of the
5 constitutional barriers is a question, could one
6 government, the federal government or the
7 provincial government, pass *RICO* as it's passed
8 by the US congress in 1970. I have a dim
9 memory, and I apologize, it's been a long time,
10 but in BC, in the UBC law library of all places
11 I found an opinion written about 1985 and I
12 haven't looked at it in 20 years, so apologies,
13 I can't tell you who wrote it, but that opinion
14 came to the view no, that one level of
15 government couldn't pass a *RICO* statute. I
16 think our point in this is that some of the
17 things that *RICO* does you could do if you were
18 coordinated between the province of BC and the
19 federal government. So you have crim org
20 offences in the *Criminal Code*. You have Ontario
21 with part 4 of the *Civil Remedies Act* which
22 operates much like part of the civil aspect of
23 *RICO*, so you could do it but probably not
24 through one legislative assembly.

25 Q Thank you. And as a followup question to that I

1 imagine you're also aware that in the United
2 States the *RICO* Act has attracted significant
3 criticism from a human rights and civil
4 liberties perspective because while it was
5 designed to target organized crime it has also
6 been used against protestors and advocacy
7 groups. Are you aware of that?

8 A (JS) So I would say about that two things.
9 We're not -- I think I said this in my opening
10 remarks. In 1970 there was -- congress had gone
11 through almost ten years of hearings into
12 organized crime and how it had embedded itself
13 in various aspects of American life, including
14 things like labour racketeering, which
15 thankfully we don't seem to have up here in
16 Canada. One of the things that they did with
17 *RICO* was they gave the right to private citizens
18 and private plaintiffs to use these
19 extraordinary remedies, the most of important of
20 which is treble damages. So what happened after
21 1970 and it was curtailed a little bit under the
22 Clinton administration, although I can't name
23 the statute that reformed, is that there was a
24 private *RICO* bar that used these in all kind of
25 unfortunate ways, including going after

1 protestors and other things. And we're in no
2 way recommending any kind of legislative
3 proposal that would put thousands of private
4 attorney generals out there to go after the mob.
5 The only other thing I would observe is BC and I
6 gather there is a case out of UBC right now
7 which is very much in the papers, has the
8 *Protection of Public Participation Act* which is
9 anti-slap measure designed to be curative to the
10 very problem that with you're pointing to. But
11 we're not recommending that private plaintiffs
12 be allowed to use that kind of a statute the way
13 they are in the United States.

14 Q Sorry, did you want to add something,
15 Dr. Cockfield. I just saw you unmute.

16 A (AC) No, but you're right to be concerned about
17 *RICO* and some of its abuses, but as Jeffrey has
18 mentioned they have had 50 years of experience,
19 and so you know, we would look at that. And
20 they have got other issues that we don't have,
21 the militarization of their police and very
22 aggressive tactics to recover proceeds from
23 crime. There has been some critique here in
24 Canada of that as well but not nearly to the
25 extent as the Americans see. But the larger

1 problem is for instance in the Panama Papers and
2 Paradise Papers we saw foreign law firms
3 described in Canada as a great place to set up
4 your global financial crime base. There's a
5 Vancouver professor, Christian will remember the
6 name, who coined the term "the Vancouver method"
7 that describes how these mobsters, by the
8 hundreds according to law enforcement, are based
9 in Vancouver and they come from the States, they
10 come from China and Russia and all over the
11 place. So we're a wonderful place to engage in
12 this crime and one of the reasons why we're so
13 wonderful is we don't have a *RICO*-like statute.
14 So to protect the public interest and ensure
15 that the interest of average Canadians are
16 protected, one of our recommendations, obviously
17 beyond the purview of this particular
18 commission, is to promote at the federal level a
19 *RICO*-like statute to account for all of these
20 concerns that you've set out.

21 Q Thank you. And appreciating that you aren't
22 advocating for a *RICO* statute that would enable
23 private parties to bring a *RICO* suit, wouldn't
24 you still agree even a *RICO* statute that just
25 allows the state to bring these types of actions

1 could raise civil liberties concerns? For
2 example, under the Trump administration there
3 was discussion of using *RICO* to target Black
4 Lives Matter protestors and Antifa.

5 A (AC) One way that's protected against that
6 outcome in Canada is at the federal government
7 every federal agency has to engage in privacy
8 impact assessments. I believe in the BC privacy
9 commissioner there's a provincial level, so all
10 of this stuff is investigated to ensure that we
11 don't have these outcomes that you're talking
12 about. There's always the risk with respect to
13 any police investigation of abuse, but
14 absolutely we don't want them investigating
15 indigenous protestors surrounding environmental
16 concerns. We're looking -- we're trying to
17 target the global financial criminals.

18 (JS) There is a civil version of *RICO* in
19 Ontario. It's only been used a couple of times,
20 significant frauds and all of that kind of
21 stuff. But the premise of that system and of
22 all civil asset forfeiture systems, to be honest
23 with you, is rule of law. So the court is
24 always given a very broad discretion, including
25 discretion to not make an order even though the

1 Attorney General might make out all elements.
2 If the court find it's clearly not in the
3 interest of justice to make any particular order
4 they have given by statute, by the legislative
5 assembly, that authority. And so it's not
6 perfect for sure. Abuses can happen, but we
7 really do trust in our courts and we trust in
8 the independence of the judiciary as a check on
9 abuses. So, you know, it's inconceivable to me
10 as the former director of the civil forfeiture
11 program in Ontario that it would ever be
12 used in that way. Now, who knows, but that to
13 me because I would know that the superior court
14 of justice in Ontario is going to oversee what I
15 am going to do and they're going to look at it
16 skeptically, I think that's a very good and
17 solid safeguard that's build into the -- sort of
18 baked into the system.

19 (CL) I would say that accountability is of
20 course a key component to the legitimacy of any
21 such measures, and any time you expand that sort
22 of reach of the state you need to have the
23 appropriate accountability measures and I would
24 say there are three important measures now at
25 the federal level, two of which a short time ago

1 did not exist. We have the national security
2 intelligence review agency, under which that has
3 a full purview of all the security and
4 intelligence agencies at the federal level. We
5 have the national security intelligence
6 committee of parliamentarians with access to
7 classified information. And we've already seen
8 some of the reports by them that are able to
9 look into matters that might be concerning to
10 parliamentarians, and of course we have the
11 civilian review and complaints commission, which
12 is currently I think it is Bill C4. There's a
13 bill before parliament to not just to expand the
14 remit of the commission but also to expand it to
15 CBSA. So I would say, you know, we can also
16 think about this at the provincial level, is
17 there some accountability, arm's length
18 accountability entity that is necessary to
19 reassure Canadians. So absolutely. But I would
20 say we already have now pretty robust
21 accountability measures in place at the federal
22 level that can readily ensure that any such
23 expansion of statutory power is operationalized
24 appropriately.

25 Q Thank you. For my next question, Madam

1 Registrar, I'm wondering if you could call up a
2 document for me. And this was an op ed authored
3 by Dr. Cockfield entitled "The High Price of
4 Chinese Money Laundering in Canada."

5 MS. MAGONET: Perhaps I should note at this point,
6 Mr. Commissioner, or rather seek your leave to
7 put this document to the witnesses because I did
8 not give the requisite five days' notice, but it
9 is authored by a member of this panel, so I
10 don't know if that may allay some concerns.

11 THE COMMISSIONER: Again, I'll just raise the issue
12 with the participants. Mr. Martland, do you
13 take a position on it?

14 MR. MARTLAND: No. My position would be guided by
15 the witnesses whether there's an issue of
16 fairness to the witness, so Dr. Cockfield can
17 tell us if there's an issue, but I wouldn't have
18 expected so for his own paper here.

19 THE WITNESS: (AC) I'd be happy to answer any
20 questions.

21 THE COMMISSIONER: All right. And is there any other
22 objection to it for any other reason? I'll just
23 throw that out to the balance of the
24 participants. All right. I think you're free
25 to go ahead, Ms. Magonet.

1 MS. MAGONET: Thank you, Mr. Commissioner.

2 Q Dr. Cockfield, do you recognize this is an op ed
3 that you published in *The Globe and Mail* of
4 February of 2019?

5 A (AC) Yes.

6 Q Excellent. And, Madam Registrar, if you could
7 just scroll -- actually you're at a great spot.
8 Dr. Cockfield, in this op ed you write that:

9 "A glimpse into Chinese money laundering
10 helps us understand the struggles within
11 an authoritarian state awash with cash and
12 how it dumps some of its problems on
13 countries like Canada."

14 Do you still hold this view today?

15 A (AC) Yes.

16 MS. MAGONET: Thank you. Those are my questions,
17 Mr. Commissioner. Thank you to the panel.

18 MR. COMMISSIONER: Thank you, Ms. Magonet. I'll turn
19 now for --

20 MR. MARTLAND: I wonder if I could pause to ask
21 should we mark that as an exhibit.

22 MS. MAGONET: Sorry, I meant to do that. Or I meant
23 to make that request, Mr. Commissioner. If we
24 could have that marked as an exhibit.

25 THE COMMISSIONER: All right. Of course. We will

1 mark that as the next exhibit.

2 THE REGISTRAR: 830.

3 **EXHIBIT 830: The high price of Chinese money**
4 **laundering in Canada, by Arthur Cockfield,**
5 **February 9, 2019**

6 THE COMMISSIONER: I'll turn now to Mr. Rauch-Davis
7 for Transparency International Coalition, who
8 has been allocated 15 minutes.

9 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner.

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

11 Q Madam Registrar, I'm wondering if we could bring
12 up the panel's report and go to page 17. So I
13 think I'll direct my questions at you,
14 Dr. Cockfield. And if any other panel members
15 wish to have input please let me know or feel
16 free to interject, but, Dr. Cockfield, so this
17 page 17 of this report kind of speaks to the
18 beneficial ownership regime in BC and Canada
19 with an ultimate conclusion in the last
20 paragraph. If we can scroll down, Madam
21 Registrar. That BC should work with its federal
22 counterparts on a national registry of
23 beneficial owners of all businesses and legal
24 entities. Do you see that? I see you nodding
25 your head. So I take it --

1 A (AC) Yes.

2 Q I take it you would agree that Canada's weak
3 beneficial ownership regime has historically and
4 currently makes it an attractive target for
5 money laundering and global criminals?

6 A (AC) Yes, Tax Justice Network on financial
7 secrecy I've looked into very carefully. It's
8 the most sophisticated methodology to gauge
9 financial secrecy laws and it looks at
10 beneficial ownership and all of the related laws
11 that are implicated with respect to this sort of
12 thing. So yeah, Canada is a very secret
13 country, one of the most financially secret
14 countries in the world.

15 Q And it's known by yourself that criminals
16 exploit that secretive nature of Canada and it's
17 beneficial ownership regime?

18 A Yes, they do.

19 Q And so part of that conclusion there is that
20 corporations, partnerships, limited partnerships
21 and trusts should all be included in the
22 registry?

23 A (AC) Yeah. That's right. To its credit
24 BC already has the first registry, the *Land*
25 *Ownership Transparency Act* registry, so this

1 registry."

2 So my question on that, I take it that you would
3 agree that the best beneficial ownership
4 registries have public access. Right?

5 A (AC) I would disagree. I think that if it's
6 publicly accessible, I mean, there's advantages
7 and disadvantages. The main one is that it's
8 the privacy intrusion. So if I'm a rich
9 person -- I'm not -- I don't want other
10 Canadians having access to this information,
11 what corporations do I own and so on. It can
12 lead to jealousy. And in the US when they used
13 to publish income tax records it led to
14 kidnappings of the children of wealthy
15 individuals. But also I don't think it's
16 politically feasible. I think Canada, we are
17 concerned about privacy and it's just an uphill
18 battle to argue for this complete public
19 registry. Academics are on both sides of this
20 issue. In my prior publications I support a
21 registry that is only accessible by government,
22 by law enforcement. And I think it will allow
23 for the collection and the sharing of far more
24 meaningful data.

25 Q Maybe I can rephrase my question. But if you

1 strip away the privacy concerns just from a
2 purely AML perspective, public registry is
3 better. And I'll give you an example is that
4 we've heard some evidence today from the panel
5 on kind of the global aspects of money
6 laundering and how the predicate offence is
7 overseas. Well, part of the benefit of a public
8 registry is that then the eyes on the ground
9 oversees who see the predicate offence. If they
10 see that a kleptocrat owns a couple of mansions
11 in the Lower Mainland they can report that.
12 They only see that with the public registry,
13 though, right?

14 A (AC) Yes. I think from a theoretical
15 perspective taking it out of context and not
16 worrying about privacy, yeah, it should be fully
17 public. That would be the more optimal outcome.

18 Q Right. And then just dealing with the privacy
19 aspects then, if we can go through the act of
20 weighing, I guess. I mean, you're familiar with
21 the UK's People of Significant Control registry;
22 right?

23 A (AC) Are you talking about the new federal
24 registry that England has?

25 Q Yeah, the PSC --

1 A I don't know the name of it.

2 Q That's right. It's the corporate registry in
3 the UK. It's been available since 2016.

4 A (AC) Yes.

5 Q And so there they have -- it's public. They
6 have citizenship information, nationality. That
7 is publicly available information. Do you know
8 that?

9 A (AC) Well, no, I don't know the details about
10 their program.

11 Q Okay. Are you aware of any reports of problems
12 arising from the public nature of their program?

13 A (AC) I'm not. I would only point out that of
14 course we were a very different constitutional
15 framework compared to the United Kingdom. So,
16 in other words, it may not be legally or
17 constitutionally accepted to have a publicly
18 accessible registry.

19 Q In terms of factors of that registry as well,
20 they have a tiered system. Are you familiar
21 with what I mean by a tiered system?

22 A No, I'm not.

23 Q So part of the registry is available to law
24 enforcement only, and much broader aspects are
25 available -- or some aspects are available to

1 the public at large, and that I take it is a way
2 to kind of limit the privacy impacts. Do you
3 have any thoughts on that type of system?

4 A Yeah, I mean that is a potential approach. In
5 my writings I have acknowledged if it went
6 public then we could -- this is something
7 Jeffrey mentioned, we could deputize private
8 actors. And just as you're suggesting they
9 could sift through -- they actually do transfer
10 pricing audits as well, but they could find out
11 these kleptocrats that maybe are living in -- I
12 don't know, in Toronto but they bailed out of
13 some eastern European country. But that sort of
14 scheme to me is unseemly that, you know, the
15 notion that we're going to be able to look
16 through the financial records, and discover the
17 actual human beneficial owners by private
18 citizens, I just don't agree with. I don't
19 think it's appropriate for the Canadian context.

20 (GC) Could I add one thing, and running a
21 private investigative agency as well, one of the
22 things that we have to do when we access
23 information is it's got to be for a lawful
24 purpose, and I think you could create a registry
25 and allow access if it was done for a lawful

1 purpose of which you will be held to account if
2 you step outside of it.

3 Q Right. I take it you're familiar,
4 Dr. Cockfield, in BC that we have a corporate
5 registry, right, and that lists the directors of
6 companies and officers? I see you nodding your
7 head.

8 A (AC) Yes, sorry, yes, I am familiar.

9 Q And is it your evidence that there's a stronger
10 privacy interest in whether you own a company or
11 rather than when you have like a managerial
12 role?

13 A (AC) I think so. Again, if one discloses to the
14 publication that one is essentially a
15 millionaire or a billionaire, that has obvious
16 personal implications for one's family versus if
17 one is a director or a manager of a firm.

18 Q Right. I'll take you back. I'm not sure if
19 you're familiar as well part of the UK registry
20 as well is that they have a carve-out provision.
21 For those people with legitimate privacy
22 concerns with their information being public
23 they can apply to court to have it removed from
24 the public registry. Doesn't that sound like a
25 proportionate response to that type of issue?

1 A (AC) It does in the sense that the folks who
2 would be worried are typically high-net worth
3 individuals. You know, so even if they created
4 this cumbersome, legalistic approach, if they
5 are very worried, they take it. So that does
6 assuage my concerns to a certain extent, but
7 again, you know, England is not Canada. And we
8 do have a charter.

9 Q We do have a charter. I guess I think part of
10 the report as well focuses on kind of sanctions
11 for non-compliance with a regulatory regime, and
12 so part of what has been contemplated with a
13 beneficial ownership registry is that you can
14 implement sanctions for false filings or
15 fraudulent filings. Do you think that would
16 assist Canada's AML regime?

17 A (AC) So come up with some kind of rule. I mean,
18 currently there are -- you know, so we have the
19 common reporting standards that I mentioned, and
20 if one doesn't comply, then there are sanctions.
21 So there are different ways that people are
22 looking at loopholes in the CRS system all
23 around the world, lawyers. It's got as many
24 holes as Swiss cheese. Actually for all these
25 taxpayers in the grey markets, say they've made

1 \$500 million in online pornography or online
2 gambling, they want to hide their money from
3 their home country. Maybe it's Russia and you
4 don't want somebody to find out because you will
5 be in very bad trouble. So they're hiring
6 lawyers, so they're in compliance with CRS, full
7 compliance, and authorities still don't see who
8 is the actual beneficial owner. So a separate
9 issue is the CRS needs to be reformed. But my
10 point is that no matter what regime you come up
11 with, for the grey market people, if they're
12 high net worth individuals they'll find ways to
13 comply and we still won't figure out who they
14 are.

15 Q Okay. I think I have your evidence on that.

16 MR. RAUCH-DAVIS: Those are my questions. Thank you.

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

18 Anything arising, Ms. Magonet?

19 MS. MAGONET: No, thank you, Mr. Commissioner.

20 THE COMMISSIONER: Mr. Usher?

21 MR. USHER: No, thank you, Mr. Commissioner.

22 THE COMMISSIONER: Ms. Gardner?

23 MS. GARDNER: Nothing arising. Thank you,

24 Mr. Commissioner.

25 THE COMMISSIONER: Mr. Martland?

1 MR. MARTLAND: No, thank you.

2 THE COMMISSIONER: All right. Thank you to the
3 members of the panel, Mr. Clement,
4 Dr. Cockfield, Dr. Leuprecht and Mr. Simser, and
5 particularly Mr. Simser, who has appeared before
6 this commission on two occasions, and I
7 appreciate the fact that you have done so on
8 your own time. Very much appreciative of all of
9 you. I think the session was a very
10 thought-provoking one and a stimulating exercise
11 and it will help delineate the potential
12 approaches for the commission to take in
13 grappling with these difficult issues and in
14 coming to grips with a very challenging problem.
15 So I am grateful to you all for the time you've
16 taken in sharing your experience and expertise
17 with us. You are excused from further testimony
18 now. And, Mr. Martland, I think we're over
19 until Monday at 9:30; is that correct?

20 MR. MARTLAND: Yes.

21 THE COMMISSIONER: Thank you.

22 THE REGISTRAR: The hearing is now adjourned until
23 April 12th, 2021, at 9:30 a.m. Thank you.

24 **(WITNESSES STOOD DOWN)**

25 **(PROCEEDINGS ADJOURNED AT 1:28 P.M. TO APRIL 12, 2021)**