

**PROCEEDINGS AT HEARING
OF
JANUARY 11, 2021**

COMMISSIONER AUSTIN F. CULLEN

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January 11, 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. McGowan, do you or Mr. Isaac have conduct of the evidence today?

MR. MCGOWAN: Mr. Isaac does, Mr. Commissioner.

THE COMMISSIONER: Thank you. Yes, Mr. Isaac.

MR. ISAAC: Mr. Commissioner, before we call the next witness I'd ask that we please tender the overview report on the accounting sector in British Columbia dated December 17th, 2020. May we please bring that document up, please. I believe that will make -- if we enter that, it will be exhibit 391.

THE COMMISSIONER: Very well. 391.

THE REGISTRAR: Exhibit 391.

EXHIBIT 391: Overview Report on the Accounting Sector in British Columbia - December 17, 2020

MR. ISAAC: Thank you. The next witness, Mr. Commissioner, is Matthew McGuire. And he will swear.

THE COMMISSIONER: Thank you.

1 **MATTHEW MCGUIRE, called**
2 **for the Commission,**
3 **sworn.**

4 THE REGISTRAR: Please state your full name and spell
5 your first name and last name for the record.

6 THE WITNESS: Matthew, M-a-t-t-h-e-w, John, J-o-h-n,
7 McGuire, M-c-G-u-i-r-e.

8 **EXAMINATION BY MR. ISAAC:**

9 Q Thank you, Mr. McGuire. I'd like to begin by
10 asking you some questions about your education
11 and professional experience in public accounting
12 and as it relates to money laundering in
13 particular.

14 MR. ISAAC: If I could ask the hearing registrar if
15 we could bring up the document at tab 1, which
16 is a copy of Mr. McGuire's CV, please.

17 Q Mr. McGuire, do you see that -- recognize that
18 document?

19 A I do.

20 Q Is that a copy of your CV?

21 A It is.

22 MR. ISAAC: I'd ask that we please enter that as
23 exhibit 392.

24 THE COMMISSIONER: Very well.

25 THE REGISTRAR: Exhibit 392.

1 **EXHIBIT 392: Curriculum Vitae of Matthew**
2 **McGuire**

3 MR. ISAAC:

4 Q And in terms of -- we can bring that document
5 down now, Madam Hearing Registrar.

6 In terms of your education, Mr. McGuire, you
7 hold a masters degree in accounting from the
8 University of Waterloo; is that right?

9 A That's correct.

10 Q And a diploma in investigative and forensic
11 accounting from the University of Toronto?

12 A Yes.

13 Q You are certified in financial forensics as well
14 as an AML specialist and you're also certified as
15 a cryptocurrency investigator. Is that all
16 correct?

17 A That's all correct.

18 Q And in connection with the University of Toronto
19 you've also been a regular lecturer -- guest
20 lecturer and instructor as well; is that correct?

21 A Yes. Since 2005 to just about present day of
22 being a lecturer, and more recently an
23 instructor.

24 Q And in those capacities have those involved any
25 AML -- anti-money laundering-related research or

1 work?

2 A Yes, certainly. I've had the pleasure of
3 supervising seven graduate research papers on
4 the topic of anti-money laundering.

5 Q Are there any examples of those graduate papers
6 that are particularly relevant to the subject
7 matter of the report that we will be turning to
8 shortly?

9 A Sure. I mean, some of them had to do with asset
10 tracing and forensic accounting and money
11 laundering and one in particular, the most
12 recent, was with Julie Ferraz, who is with the
13 OSC. And in doing her Masters of Accounting
14 program she studied the security sector, and one
15 of the frustrations she came to in the course of
16 that research was also, you know, despite the
17 indications that there was indeed money
18 laundering through securities, there were very
19 few convictions for her to point to on which to
20 base her research.

21 Q You're also a fellow of the Chartered
22 Professional Accountants of Ontario; is that
23 right?

24 A I am.

25 Q You've published in the *Annual Review of*

1 *Insolvency Law* on money laundering?

2 A I have.

3 Q And you've been certified by the Ontario Superior
4 Court on several occasions as an expert in
5 forensic accounting and money laundering; is that
6 right?

7 A That is right.

8 Q I'd like to turn from your educational background
9 to your professional experience in public
10 accounting. Would you please provide a
11 description of your professional experience for
12 the Commissioner.

13 A Yes, certainly. You know, as it relates to
14 public accounting, I mean, I went through a very
15 traditional route to become a CPA, which
16 involves a certain number of hours of public
17 accounting and professional accounting
18 experience. I worked for a number of mid-sized
19 firms before joining Deloitte in their financial
20 advisory practice. I moved from there to be a
21 partner at MNP, where I was the national
22 anti-money laundering practice leader. I was
23 the Ontario leader for forensics.

24 Before I joined them, I assisted them with
25 the development of their anti-money laundering

1 program. I conducted routine examinations of
2 the program and its effectiveness which involved
3 surveys of every partner, regional managing
4 partner, regarding the sorts of activities that
5 were undertaken for two reasons. One for
6 assessing money laundering risk, and the second
7 for understanding -- for being able to develop a
8 program that was centred around where those
9 activities were occurring.

10 Now at The AML Shop I act as an advisor to
11 governments, to banks, to credit unions, to
12 securities dealers and certainly, you know, the
13 exposure I have there to professional accounting
14 firms is as an advisor and sometimes as a
15 reviewer. So working with, you know, somewhere
16 around 10 or 12 public accounting firms, helping
17 them get their programs up to specifications,
18 conducting their training and then conducting
19 routine reviews. And I repeat in each of those
20 instances that survey exercise where you reach
21 out to partners to try to isolate where the
22 qualifying activities, the activities that are
23 subject to legislation, exist to be able to
24 design a program that finds them and understands
25 their risks and attempts to deal with that risk.

1 Also as an advisor I help some public accounting
2 firms with a peer review of their own
3 effectiveness reviews.

4 The other activity that The AML Shop
5 provides is outsourced AML services. So for
6 some credit unions, fintechs, other non-bank
7 financial institutions. And for one accounting
8 firm we conduct ongoing monitoring. So we
9 conduct transaction monitoring looking for risk
10 in transactions. And certainly in the case of
11 financial institutions our transaction
12 monitoring is scaled to look at professionals,
13 to look at gatekeepers in a more intensive way,
14 appreciating the risks that they pose.

15 And then, you know, while I was trained as
16 you pointed out as a forensic accountant, I've
17 worked in that capacity in the UK, in Canada and
18 in various countries around the world. One of
19 the roles that I held was -- most significant
20 was being the partner responsible for the
21 Toronto Police Services financial crime unit
22 file in which I assisted in the investigation of
23 financial crimes with a focus on money
24 laundering and also had the opportunity to
25 observe accountant involvement in money

1 laundrying and financial crime.

2 I suppose the other experience that I draw
3 on in terms of professional experience related
4 to public accounting was my time serving as
5 chair on the CPA AML committee during which time
6 I developed the -- together with my colleagues
7 there the guide to comply with Canada's AML
8 legislation. I did that while a partner at MNP.

9 Q Mr. McGuire, you mentioned there at the end that
10 you were the chair of CPA Canada's anti-money
11 laundrying committee. What years were you the
12 chair of that committee, please?

13 A That was leading up to -- the four or five years
14 leading up to 2015.

15 Q Okay. And you also note in your CV that you
16 served as a member on the Department of Finance's
17 private-public advisory committee on money
18 laundrying and terrorist financing; is that
19 correct?

20 A That's correct. And there I was representing
21 the accounting sector.

22 Q Okay. And early on in your career you were an
23 analyst with FINTRAC; is that correct?

24 A Briefly. I was a strategic and tactical
25 intelligence analyst with FINTRAC.

1 Q Could you describe your role briefly as the chair
2 of CPA Canada's AML committee? What work was
3 involved in that capacity?

4 A Sure. You know, to begin with there were
5 some -- at that time there were some fairly
6 substantial changes being made to the
7 legislation, and part of the mandate involved
8 considering and commenting on those changes.
9 You know, the role evolved both in terms of
10 composition and need based on the number of
11 inquiries that were by, you know, the Senate
12 committees, House of Commons committees looking
13 into accountant involvement in money laundering
14 and the sorts of -- and money laundering/
15 terrorist financing as that theme evolved.

16 And the next real mandate was around
17 awareness. You know, we recognized as a
18 committee at that point early on that the
19 suspicious transaction reporting figures were
20 exceptionally low. And yet when we were hearing
21 testimony in some of these committees and when
22 we were looking at the documents put out by some
23 of the super national bodies, it seemed to point
24 to that somehow there was professional
25 involvement in money laundering. And even

1 speeches in the day, FINTRAC was quite clear
2 that professional money laundering and money
3 laundering is -- facilitators were a concern for
4 them.

5 And so that was -- you know, this is where
6 the disconnect was. And so the committee -- the
7 mandate's committee [sic] shifted very much
8 towards public education. How do we let the
9 accounting sector know what their obligations
10 are. How do we make them wise to the sorts of
11 things they should be looking for in the course
12 of their work.

13 And still even, you know, while at MNP they
14 were very active in mergers. And they could
15 tell new accounting firms coming in that this
16 just wasn't on their radar. That this was --
17 that anti-money laundering was not a
18 significant -- seen as a significant risk in
19 terms of enforcement to them.

20 And so that was the motivation before the
21 guide, first of all, where, you know, together
22 with my fellow committee members, Mike
23 Ecclestone and Monica Stark, one a lawyer with
24 extensive AML experience and the other had --
25 Monica Stark had come from an extensive

1 background in public accounting at Deloitte and
2 other firms in Alberta.

3 And so we developed the guide with a view to
4 education, to create the awareness that there
5 were these obligations and even to provide a
6 little bit of a roadmap on how to comply.

7 Q Sorry, Mr. McGuire. Perhaps we could look --
8 you've referred to this guide.

9 MR. ISAAC: Madam Hearing Officer, if we could bring
10 up the document at tab 3, please. If we could
11 scroll down slightly.

12 Q Mr. McGuire, is this the report, the guide that
13 you were referring to that you authored for the
14 CPA Canada?

15 A It absolutely is, yes.

16 MR. ISAAC: If we could please have that entered as
17 the next exhibit. I believe exhibit 393.

18 THE COMMISSIONER: Very well. 393.

19 THE REGISTRAR: 393.

20 **EXHIBIT 393: CPA Guide to Comply with Canada's**
21 **Anti-Money Laundering (AML) Legislation prepared**
22 **by MNP LLP**

23 MR. ISAAC:

24 Q And, Mr. McGuire, you were explaining what the
25 purpose of this guide was. If you could just

1 continue doing so, please.

2 A Sure. It was -- you know, as an industry body
3 the idea was how do we make it easier for our
4 members to comply with the rules that are
5 applicable. Even then we recognized it was
6 difficult to determine what specific activities
7 applied, and that's why we included a waterfall
8 diagram in terms of the application of
9 legislation a little later on in the report.

10 But, you know, in terms of additional
11 activities, you know, some of them were reactive
12 where FINTRAC, for instance, asked for our
13 perspectives on risk-based approach
14 documentation that they were looking to put out.
15 And so, you know, seeing further that there
16 was a -- that if the numbers didn't -- that we
17 didn't move the needle early on, and so we took
18 additional measures. We put on a webinar where
19 there were, if I recall right, around 4,000
20 attendees. We put out articles and advisories.

21 And so, you know, I think you can gather
22 from that that our real focus was on awareness.
23 And when we realized we still weren't moving the
24 needle, we invited FINTRAC to present to the
25 committee to understand what they were seeing

1 and to see what we could do to work together
2 cooperatively to enhance awareness in the
3 sector, to enhance compliance because, you know,
4 even the access to information statistics seemed
5 to suggest at the time that we as a profession
6 weren't doing a great job when we were examined
7 about how we were complying. And so that was
8 the nature of the committee's work at that time.

9 MR. ISAAC: And I expect we will return to this guide
10 shortly, but for now if we could please go
11 forward to page 6 of the document, please. I
12 just want to -- just one -- sorry. Page 6 of
13 the actual PDF, please.

14 I apologize. I'm using references of the
15 electronic document. If we could -- I think
16 we're on page 17 now. If we could go to
17 page 6 of the electronic document. Thank you.

18 Q I just -- you mentioned some names, Mr. McGuire,
19 of others that were involved in reviewing and
20 approving the guide. Were those the people that
21 are listed here on this page?

22 A Sure. Those I mentioned. So Mike Ecclestone
23 and Monica Stark both were huge contributors.
24 As were -- I'd like to give credit at this point
25 to too to the fact that, you know, it was -- the

1 guide was written while I was at MNP and with
2 the help of folks there, drawing on their public
3 accounting experience. And one of the fellows
4 on my team then was a seven-year veteran
5 compliance officer at FINTRAC, Paul Burak, so I
6 want to give some credit there.

7 And also of course we have the direction of
8 CPA Canada themselves, who were incredibly
9 supportive with the development of the guide.
10 Ms. Dawe, Ms. Shienfield, Ms. Stirling and
11 Mr. Beal, who was then the VP of research
12 guidance and support.

13 Q This guide was published -- authored in 2014. Is
14 this guide current with current AML legislation
15 or guidance for risk?

16 A No. I mean, there's been a fairly quick
17 acceleration of the changes to the legislation
18 since 2014 has been released of the risk-based
19 guidance. There are new changes coming into
20 force in 2021. There are changes to the ways
21 that clients are meant to be identified. So
22 fairly extensive changes since then.

23 And certainly our understanding of risk
24 relating to the sector has evolved substantially
25 since that point.

1 Q Are you aware if there's been any update by CPA
2 Canada since this guide was published in terms of
3 sort of a followup?

4 A I'm not aware of an update. There have been
5 some articles published speaking to the changes
6 in regulation since its publication, however.

7 Q Thank you. I'd like to turn to the report that
8 you prepared for this commission.

9 MR. ISAAC: Perhaps we can pull this document down.
10 If we could bring up the document, please,
11 that's at tab 2 of the index.

12 Q Mr. McGuire, is this the report that you prepared
13 for the commission?

14 A It is.

15 MR. ISAAC: And I ask, please, that that be marked as
16 the next exhibit. I have that as exhibit 394.

17 THE COMMISSIONER: Very well. 394.

18 THE REGISTRAR: 394.

19 **EXHIBIT 394: Report on Accountants, Money**
20 **Laundering, and Anti-Money Laundering prepared**
21 **by The AML Shop October 31, 2020, and**
22 **updated December 31, 2020**

23 MR. ISAAC: And if we could scroll down, please, to
24 page 3 of the electronic document. Thank you.

25 Q Mr. McGuire, you note in the report here that it

1 was prepared by you and Monika Cywinska. Would
2 you please explain for the Commissioner who is
3 Ms. Cywinska and what was her role in the
4 report's preparation.

5 A Monika Cywinska is one of the founders of The
6 AML Shop. She's a seven-year veteran public
7 accountant. And so her role was largely to do
8 with standards and research related to the
9 report.

10 Q Are all of the opinions, conclusions -- and we'll
11 get to them, but the recommendations in the
12 report and that you will testify today, are those
13 all your own and ones that you agree with?

14 A They are.

15 Q Okay. What are the three -- if we go down to the
16 next -- I believe the next page, to paragraph 4
17 of the body of the report. Could you just
18 explain for the Commissioner what were the three
19 core questions that you were asked to address in
20 this report.

21 A Sure. Glad to. So the idea was first to
22 understand how are accountants involved in money
23 laundering domestically and internationally.
24 And so largely a research exercise in terms of
25 what could be determined based on authoritative

1 sources. The next question beyond -- you know,
2 beyond looking just at what is the extent of
3 involvement. And when we talk about
4 involvement, I just -- I don't mean just the
5 participation in schemes but the ability to
6 observe such schemes.

7 And then second how effective are current
8 anti-money laundering regulations in related
9 self-regulatory practices and addressing the
10 threat caused by accountant involvement. So
11 presuming there is a threat, what -- how
12 effective are those measures. And largely we
13 looked at the international methods to evaluate
14 our regime against those international standards
15 of the Financial Action Task Force.

16 And then the third question was really more
17 of a recommendation section. So considering
18 what we found in the first aspect and the second
19 aspect in terms of, you know, how big is the
20 threat and how good are the controls. The third
21 was what else could be done. How could we
22 improve.

23 And I suppose improvement isn't just about
24 the control of money laundering itself but also
25 conformance with international standards that

1 we're obligated to comply with, being a member
2 of the FATF.

3 Q Thank you. And if we go forward to the page 6 of
4 your report, you describe in general terms the
5 methodology that you used. And you note that in
6 addition to the research that you conducted, you
7 also drew on your experience as an AML
8 professional and accountant. Would you please
9 explain and perhaps give an example for the
10 Commissioner of how and where your experience
11 forms the opinion on the questions that you
12 addressed in the report, please.

13 A Sure. So I've laid out a little bit that, you
14 know, I've been involved in public accounting
15 firms and involved extensively in accounting
16 firm compliance with money laundering standards.
17 So when I talk about things like the extent to
18 which accountants are involved in particular
19 activities, I speak from the perspective of
20 somebody that's conducted surveys and
21 effectiveness reviews against the standards to
22 observe whether those things are happening.
23 Sometimes I bring in the perspective of, you
24 know, the observation of those transactions
25 through the course of outsourced transaction

1 monitoring for the financial institutions.

2 And certainly in the third part of the
3 report, you know, my recommendations are
4 informed by my experience in the field and
5 what I think I've seen work elsewhere. What we
6 didn't talk about in my experience is the extent
7 to which I've been involved in assisting other
8 country regimes towards compliance. And, you
9 know, that's also helped form my experience in
10 terms of practices that have worked and not in
11 other jurisdictions like Guyana, like the
12 Marshall Islands, Panama and such.

13 Q Thank you. You note at paragraph 11 of your
14 report that you have adopted a broad definition
15 of "accountant" and "accounting services" based
16 on the services offered as opposed to by
17 professional designation. Why did you adopt that
18 broad definition, and what is the significance of
19 that as we go through the balance of your
20 evidence today?

21 A Thanks for the question. You know, the point
22 first was that we were looking largely at how do
23 we adhere to international standards, and,
24 second, how do we respond to the risk posed by
25 accountants and accounting services. And one of

1 the reasons the recommendation is in place and
2 the recommendations related to accountants are
3 in place at all for the FATF is their
4 recognition that accountants and accounting
5 services can be exploited for money laundering.
6 And there's a few reasons they can be exploited.
7 It's because of their skill set, for one, and
8 for two because of the reputation that they
9 bring to the story.

10 And so I adopt their definition because
11 regardless of what designation you hold, if you
12 have these skills wherever gained and you
13 perform these services or help somebody to
14 prepare for performing these services, you pose
15 the same threat as somebody who's designated.
16 And so I adopt this wide view that
17 internationally has been accepted is that the
18 scope of services that fall under this idea of
19 accounting services, both by designated folks
20 and not, because of the risk that
21 internationally they seem to be -- they seem to
22 pose.

23 Q And I expect we will unpack this further,
24 Mr. McGuire, but it would be helpful perhaps just
25 to briefly explain the -- in terms of the way in

1 which the profession is regulated. You've
2 adopted a broad definition at the outset of your
3 report, but is the -- both the way that the
4 *PCMLTFA* is structured as well as the way in which
5 accounting is regulated provincially, is a
6 narrower definition something we will see that's
7 used in each of those contexts?

8 A Yeah, that is largely the point. I mean, in my
9 view expressed in the report, you know, the
10 definition the *PCMLTFA* adopts for accountant and
11 accounting services is far too narrow compared
12 to the international standard. And it makes it
13 difficult from jurisdiction to jurisdiction
14 within Canada, province by province, to
15 understand what might fall under that
16 definition. You know, we'll get into, I
17 suppose, the very specific elements of that
18 definition. But as I say, it doesn't matter to
19 me so much that somebody is regulated or not
20 from the perspective of this definition of risk.
21 Later it becomes quite important. Later when we
22 talk about mitigation, we talk about dealing
23 with the threat that somebody performing these
24 services posed, then you can think more about
25 regulation in term of is there a professional

1 body where there's oversight that might help
2 limit the risk.

3 In Canada that's a mixed story. There's a
4 very good story when we talk about province to
5 province how much oversight there is from a fit
6 and proper purpose. Who is admitted to the
7 membership in the first place. But as, you
8 know, it's pointed out in some of the other
9 materials, largely the provincial bodies defer
10 to FINTRAC as the primary regulator. And so
11 when we get into the idea about, you know, do
12 those -- does the presence as a regulation of
13 those members help to regulate for money
14 laundering, it's a mixed story.

15 Q Going on in your report at the top of page 7 you
16 describe that you have adopted -- for the
17 purposes of discussing money laundering in your
18 report, you've adopted the *Criminal Code*
19 definition under section 462.31(1), which
20 includes reference to proceeds from a designated
21 offence.

22 Just pausing there on the designated offence
23 question. Can you explain and illustrate perhaps
24 how designated offences might manifest or arise
25 in terms of an accountant's potential

1 aside from self-laundering, which might be a
2 fraud or a theft, you might think about
3 unknowingly committing a fraud; right? So let's
4 say a client comes to you and asks for advice on
5 the development of a tax structure that's
6 ostensibly to be -- ostensibly for tax
7 efficiency purposes when in fact they're looking
8 to move proceeds of crime overseas. I mean,
9 that's a second category of designated offence
10 you might think about.

11 And then there's knowingly, there's
12 complicit; right. So let's say you are the
13 accountant for a firm that is commingling, that
14 has both legitimate and illegitimate proceeds.
15 Well, then one of your jobs is that fraud or the
16 laundering of -- the explicit laundering of
17 funds is far more about making the financial
18 statements believable for tax purposes to
19 maintain margins at particular levels.

20 So I just -- I like to relate the idea of a
21 designated offence to both. The observation,
22 the participation and the exploitation of the
23 rules for oneself.

24 Q And if we turn to the section that begins
25 immediately employee here, section 6 of your

1 report, "Accountant Involvement in Money
2 Laundering." And can you just briefly, broadly
3 describe what you look at in this portion of your
4 report, please.

5 A Sure. So, you know, I was looking for
6 authoritative sources. I'm looking for sources
7 of information from trustworthy sources that
8 indicate whether accountants have a view into
9 money laundering and whether they participate in
10 money laundering.

11 So, you know, you have to start that
12 exercise with the idea of, you know, is money
13 laundering happening. And so I think, you know,
14 when I look at the articles published in the
15 magazine of CPA Canada, when I look at many of
16 the sources referenced in the tabs produced and
17 the international research and the domestic
18 research, I don't think it's hard to get to the
19 conclusion that there is a significant volume of
20 money laundering happening.

21 And, you know, whether you adopt something
22 north of 40 billion or not, it's a large number.
23 And so let's, you know, start with, if the
24 numbers are that large then and accountants must
25 be involved in most sectors of the economy as

1 scribes, as decision-makers, that it's being
2 observed. And the research went a little
3 further than that back in 1996 and 1997. What
4 they started to observe, you know, six and
5 seven years after the initiation of more
6 stringent anti-money laundering measures was
7 that we had created an environment where
8 criminals needed guides to get through the new
9 system of money laundering.

10 The predictions that have largely seemed to
11 be borne out is that the more complicated the
12 money laundering rules have become, the more
13 professionals have necessarily become involved
14 in the facilitation of money laundering, both
15 wittingly and not. That's -- you know, that was
16 the case when we look at FATF papers from 1997
17 when the group of experts, including Canada,
18 came to the table and said, you know, as money
19 laundering regulations have increased, the
20 criminals place increasing reliance on
21 professional money launderers. And the experts,
22 so those participating, those at the table,
23 reported a significant number of cases involving
24 lawyers, accountants, financial advisors,
25 notaries, secretarial companies and other

1 fiduciaries that are employed specifically for
2 that purpose.

3 And so that trend continued. You know, when
4 you move towards the Egmont Group, so the group
5 of financial intelligence units from around the
6 world, they found the same thing when they
7 published their what I think is a seminal paper
8 that, you know, talked about five methods of
9 money laundering, and one of the those five
10 methods is the misuse of legitimate businesses
11 which requires the use necessarily of
12 accountants and lawyers. And maybe not, again,
13 wittingly and maybe not as facilitators, but
14 even as observers. And so, you know, the
15 research continued. We looked at research by He
16 in 2006 where he looked at the exploitation of
17 money laundering.

18 So internationally we're seeing the vibe,
19 the theme, the continued reference to cases
20 where accountants and lawyers observe or are
21 involved in money laundering. And then one of
22 my favourite papers from 2008 Frédéric Compin,
23 he did a really wonderful job of how to think
24 about the way that an accountant is involved in
25 money laundering and, you know, he developed a

1 vertical and a hierarchical approach. I use
2 this to teach from -- sorry.

3 Q No, I was about to say you mentioned the Compin
4 models. And I believe you've reproduced diagrams
5 of each of those, and I think it may be helpful
6 to look at those and ask you to please explain
7 those models perhaps with reference.

8 So if we go down to page 8 of the paper. At
9 the bottom of the diagram I think that's the --
10 there are two of these -- you've described two
11 models. I believe this is the vertical or
12 hierarchical approach.

13 Would you please explain what this diagram
14 represents and what its significance is, please.

15 A Sure. It's just about how we think about how
16 accounting skills are necessary in the course of
17 organized crime and unorganized crime; right?
18 So you think about if you start from the
19 beginning, you think about unorganized crime and
20 you're thinking about simple acts, isolated acts
21 of, you know, stealing goods, for example.
22 Well, you know, in those small thefts and those
23 minor crimes, there's not much need for an
24 accountant's services; right? I mean, there's
25 no capital accumulation. There's, you know --

1 you're certainly not paying taxes on that money.
2 So, you know, there it's not as necessary. When
3 you think about organized crime, when you move
4 up that one level and say, listen -- there's a
5 collection of people conducting crime and
6 there's more capital accumulation, there's more
7 money to move, and there's more need for
8 intermediaries and likely more need for
9 commingling, the use of legitimate businesses to
10 hide the revenues among legitimate revenues and
11 to maintain tax compliance so as to not to
12 attract the attention of revenue agencies.

13 And you move up one more level in his scale
14 and you talk about well, if we have organized
15 crimes networks and transnational organized
16 crime networks, now we have a very significant
17 problem that requires accountants and lawyers
18 and bankers to solve, which is huge capital
19 accumulation, the need to transfer money to
20 other jurisdictions to repatriate the money, to
21 put it out of -- further out of the reach of law
22 enforcement. Then there's a significant need
23 for accounting services. The understanding of
24 financial systems, the way corporations interact
25 across borders. And from a tax compliance

1 perspective it's absolutely necessary to be able
2 to understand how those things interact because,
3 you know, tax compliance is one of the weak
4 spots of any organized crime network.

5 Q Sorry, what do you mean by that? Why is that a
6 vulnerability for network tax compliance
7 questions?

8 A Because, you know, the point of a good money
9 laundering scheme is to be -- have the absence
10 of the most oversight. So less scrutiny paid to
11 the activities and the identities of the people
12 involved and the ultimate sources and use of the
13 money. And so the moment you fall afoul of tax
14 rules, you attract that scrutiny and those
15 audits which can uncover identities and purposes
16 and means. And, you know, the tax powers are
17 quite significant when it comes to the power to
18 seize and gather information.

19 Q And if we go down to the next -- the top of the
20 next page, you set out the other approach, the
21 other -- the horizontal model. Would you please
22 explain what this model illustrates and what its
23 significance is.

24 A Sure, the idea in that research was to say, you
25 know, how does accountant involvement change as

1 we move across the spectrum from, you know, the
2 sort of acts that are entirely illegal to those
3 that are legal with illegal touches. And it
4 was -- it's illustrative from the point of, you
5 know, if you think about on that far end of the
6 spectrum with legal -- with illegal touches, so,
7 you know, accounting manipulation.

8 I'm going to talk in a minute about the
9 discipline cases that we see in BC and Ontario
10 related to CPAs, but this is a great example
11 where, you know, accountants have the knowledge
12 to manipulate financial statement for a few
13 purposes. It might be manipulating them for the
14 sake of inflating a stock price, but equally it
15 might be manipulating them to conceal laundering
16 that's happening. But the manipulation,
17 fraudulent financial statements, create the
18 proceeds of crime which accountants can deal
19 with or can observe. And so it's important to
20 think about it from that perspective.

21 And as you move to the other side of the
22 spectrum, you start thinking about what about
23 things like corruption or -- for example, right,
24 with kickbacks and schemes. And there again
25 accounting knowledge is needed to conceal the

1 nature of these contracts and payments.

2 You move to the left to things that are
3 completely illegal, like drug trafficking and
4 smuggling. And so you might need fake or
5 fictitious invoices, you might need front
6 companies. But you can see that, you know, when
7 we think about it from unorganized to organized
8 that there is an increasing level of accountant
9 knowledge necessary to facilitate. When we
10 think about it from totally illegal to illegal
11 there's another spectrum of where the services
12 of an accountant or a lawyer or other
13 professional is needed in terms of setting up
14 and basic bookkeeping and, you know, even more
15 than one set of books, for instance.

16 And need not -- I wouldn't mind emphasizing
17 that this need not be a professional accountant.
18 That anyone that provides those services that
19 has that training could perform ostensibly these
20 functions.

21 Q Are there certain services that are offered by
22 accountants in that broad definition that have
23 been identified as particularly susceptible to
24 money laundering?

25 A Sure. So the risk-based approach. The

1 Financial Action Task Force, as I say, the
2 international standard-setting body, looked at
3 worldwide what cases do we see of accountants
4 involved in money laundering and what are the
5 services that are most vulnerable to exploit.

6 And they talked about financial and tax
7 advice; right? So criminals may pose as
8 individuals seeking financial overtax advice,
9 and that's well within our domain. And this
10 is -- you know, I wouldn't mind pointing out now
11 that this is one of the weaknesses in the way
12 that our legislation is structured.

13 When you look at the *Proceeds of Crime*
14 (*Money Laundering*) and *Terrorist Financing Act*,
15 it says -- it specifically excludes advice from
16 the definition of "triggering activities."
17 Advice is -- you know, any number of pieces of
18 FINTRAC guidance tell you that accountants
19 providing advice towards qualifying activities
20 does not constitute a qualifying activity. That
21 only instructions, only specific instructions
22 count. That's a very frustrating thing, you
23 know, from the perspective of how we know this
24 to be an international typology.

25 And then company and trust formation, well,

1 even -- you know, the point is criminals are
2 trying to make it harder to follow the trail.
3 When -- you know, think about the example of how
4 many Ponzi schemes try to move money to Germany,
5 one of the reasons they have to do -- they like
6 to do that is that Germany doesn't recognize a
7 Mareva Injunction; right? You have to re-argue
8 the whole thing. So, you know, if you start up
9 setting up corporations in jurisdictions that
10 are less friendly towards seizures, then you've
11 got a great vehicle to start distancing the
12 money, making it harder to chase, harder to
13 seize.

14 And so it may not be that accountants
15 particularly are forming companies in trust. I
16 understand that, you know, from some of the
17 submissions that -- and generally that that's
18 the practice of law that they can provide all
19 the advice and all of the setups towards those
20 company and trust formations. And I'd say in my
21 experience tax practitioners perform these roles
22 from a legitimate perspective regularly. It's a
23 routine part of their job. Tax training and the
24 organization of affairs for tax efficiency is --
25 it was part of my basic CPA training.

1 Q Thank you. I should just -- it may be helpful
2 just to note that the -- a lot of the services
3 that you're identifying are -- they're
4 referenced. They're listed at paragraph 19 of
5 your report and you were discussing company and
6 trust formation. And if you could continue on
7 going through that list, Mr. McGuire, and also
8 identifying the extent -- as you have been for
9 those first two, the extent to which you
10 understand that those services are actually
11 provided by accountants in Canada and where that
12 associated money laundering risk may arise. But
13 please go on.

14 A Sure. You know, buying or selling property
15 certainly -- you know, unless an accountant is a
16 real estate agent, they may not directly be the
17 buyer -- or the agent or broker. But, you know,
18 considering the extent to which accountants can
19 be the financial money managers for family
20 trusts, for instance, that the occurrence of
21 buying or selling property might happen. You
22 know, in some of the cases where I've conducted
23 investigations for law enforcement and even in
24 defence cases related to professionals, you
25 know, it's -- buying or selling property seems

1 to be a mainstay of any of the money laundering
2 schemes that I've observed. Admittedly in the
3 surveys I've conducted of the public accounting
4 firms that I've assisted with compliance, I
5 haven't seen a huge extent of property
6 transactions represented by those -- represented
7 by partners.

8 Performing financial transactions is far
9 more common and the smaller the firm is, in my
10 experience, the more likely it is that an
11 accountant is trusted by an individual to
12 perform financial transactions on their behalf,
13 to open bank accounts or to assist in references
14 to opening bank accounts, to assist with making
15 payments, to make out cheques. In preparing the
16 documentation related to those things.

17 The following three on page -- sorry.

18 Q No, please go on. I was about to ask whether or
19 not accounting firms have trust accounts. If you
20 could address that.

21 A I don't mind at all. You know, so I have
22 observed the use of trust accounts. You know,
23 they aren't the trust accounts that, you know, a
24 lawyer might use. They're not the same concept
25 altogether, but they do hold trust accounts and

1 will make payments to and from those trust
2 accounts various reasons.

3 I've already mentioned gaining introductions
4 to financial institutions in terms of accounts
5 and to other accountants as well. The
6 maintenance of records is clearly a prime
7 function of accountants.

8 And then. You know, the final activity that
9 the FATF says is a risk is the preparation,
10 review and auditing of financial statements.
11 I'm less convinced that professional accountants
12 are complicit in the preparation of assurance
13 statements for those they know are laundering
14 money. That's not what I think anybody is
15 trying to point out here. I think the point is
16 that the preparation. Review and audit of
17 finance statements is an opportunity for
18 accountants to observe potential financial crime
19 and money laundering. You need not look much
20 further than Wirecard as an example of that sort
21 of scheme.

22 So this dovetails nicely into the next
23 paragraph of the report at 20 where we talk
24 about, you know, what are the most prevalent
25 international schemes that the FATF has

1 observed, which is, you know, the exploitation
2 of the opacity of beneficial ownership; right?
3 So, you know, the FATF believes that it is most
4 common that individuals try to take advantage of
5 the lack of beneficial ownership information
6 available to the public in a detailed way, in a
7 consistent way and in a verified way.

8 The second most common scheme cited by the
9 FATF and by the US Department of State is
10 trade-based money laundering, which seems to be
11 a significant risk in Canada. And Professor
12 Zdanowicz suggested at one point that 80 percent
13 of the money laundered between Canada and the US
14 was attributable to trade-based money
15 laundering.

16 And so you think about the idea of under or
17 overpricing goods to cross borders to be able to
18 move value. And you can't help but expect that
19 someone with accounting skills is helping to
20 facilitate that scheme from the perspective of
21 first, you know, a tax compliance at a base,
22 customs compliance second, and then, third,
23 maintaining a set of records that appears
24 legitimate enough to not attract scrutiny by
25 anyone.

1 And then finally, alternative payment
2 methods. Well, the point about training as an
3 accountant is understanding the financial system
4 and the movement of money, and so the use of
5 alternate payment systems comes second nature to
6 an accountant.

7 And so you think about all those things
8 together and that's where we see the
9 international spectrum of the view of the risk
10 of accountants' involvement in view of money
11 laundering.

12 Q And if you could clarify and perhaps explain a
13 little bit further two components. One is you
14 mentioned the distinction between the advising on
15 these various areas as opposed to necessarily
16 being the one to carry them out. I think the
17 example you used was in terms of company
18 formation, what the significance of that might
19 be. And the other is that -- the other
20 distinction that I think you referenced was that
21 this may not always be a matter of involvement on
22 the part of the accountant but observing risk and
23 suspicion.

24 If you could just explain that -- those two
25 aspects a little bit more, Mr. McGuire.

1 A Sure. You know, far less often does an
2 accountant provide specific instructions for a
3 particular financial activity than does an
4 accountant provide advice about how to structure
5 affairs in a tax efficient manner. For
6 instance, the advice is far more common an
7 activity and, in my view, just as threatening
8 from a money laundering perspective as
9 conducting the instructions themselves.

10 You know, in fact, if I saw an accountant
11 conducting transactions through one of the
12 accounts we monitor for a client, it would
13 arouse far more suspicion than if the client
14 conducted it themselves and I wouldn't know
15 about the advice behind the scenes, for
16 instance. And so, as I say, only the actual
17 instructions themselves are covered by Canadian
18 law.

19 Sorry, Mr. Isaac. Your second point was ...

20 Q The second question was about the distinction or
21 the significance of not necessarily being the one
22 knowingly carrying out these activities but
23 observing the -- observing suspicious
24 circumstances for each of those. And I think one
25 of the examples you had used was the risk or the

1 suspicions that might arise in an audit context.
2 If you could explain that a little bit further,
3 please.

4 A Sure. You know, that's -- you know, it's
5 generally accepted that financial intelligence
6 is the way to defeat money laundering and so
7 accountants have a front seat to these
8 transactions. We see them and we have the
9 opportunity to enrich the financial intelligence
10 database with that information. And in the
11 absence of broad coverage or suspicious
12 transaction reports we're depriving our
13 financial intelligence units of that data, that
14 missing piece of the puzzle.

15 Q Thank you. And if we go on the next section
16 beginning at paragraph 21, is -- you refer to
17 Canada and money laundering, and you provide some
18 of those global estimates. And fair to say -- I
19 think you'd indicated that you're describing the
20 reason -- the significance of this is that if the
21 scope of money laundering occurring is that
22 large, then accountants are more likely to be
23 involved than not given just the scale of
24 suspected money laundering. Is that accurate in
25 terms of the significance of this?

1 A That is accurate. And even, you know, the CPA
2 Canada articles on the subject are quite clear
3 that, you know, Canada is a wonderful
4 environment for money laundering because of its
5 reputation and because of the lax
6 prosecutions -- or the limited prosecutions over
7 time. I don't think there's any dispute that it
8 is -- that the number is a significant number.

9 And I draw -- you know, I start to -- you
10 start to infer that, let's say, if it is a large
11 number, then it must be -- you must imagine that
12 an accountant must observe it. And if you think
13 about the vertical and the horizontal approach,
14 there are a number of ways that an accountant
15 must and is likely involved in those sorts of
16 activities.

17 And so the next question is is there direct
18 empirical or anecdotal evidence that accountants
19 are indeed involved or have a view on the money
20 that is laundered in Canada. And so you start
21 by -- where I started was, you know, let's think
22 about well, what are the convictions -- where
23 are the convictions and what do they tell us.
24 And so, you know, as Global News Andrew Russell
25 has pointed out that the rates of conviction are

1 quite low. We've seen very little in the way of
2 convictions and significant loss of liberty or
3 cash by money launderers.

4 And there's many references to how, you
5 know, part of that problem might have been the
6 difficulty in the *Criminal Code* definition
7 that -- where recklessness was recently added
8 to -- you know, added to the point where an
9 individual who was a professional money
10 launderer might not -- it might be hard to prove
11 that they had specific knowledge of the proceeds
12 being the proceeds of crime to be able to obtain
13 a conviction.

14 And, you know, even while at CPA Canada we
15 were hearing from the RCMP and around the table
16 at the advisory committee to finance that
17 professional money launderers were the biggest
18 threat being pursued by the RCMP. That was
19 repeated by Superintendent Payne at his speech
20 on March 4th in front an investment industry
21 committee. You know, so you start to look at --
22 you start to hear and read about these things
23 and that leads to, you know, a look at well,
24 what do the official Government of Canada
25 documents say about it.

1 And the RCMP fortunately through the
2 Criminal Intelligence Service put out a recent
3 report that talked about how their particular
4 concern are organized crime groups and criminals
5 who launder funds by engaging professional money
6 launderers who offer their services for a fee,
7 which include accountants, bankers and lawyers.
8 And so, you know, you read that from the RCMP
9 and you might think, well, they're in a good
10 position to see that. So that was where my next
11 piece of the puzzle came in.

12 And then, you know, FINTRAC's research has
13 pointed out similarly, you know, their 2015
14 paper, that they've seen professional money
15 launderers occupy positions such as accountants,
16 bankers and lawyers, providing a veneer of
17 legitimacy. The standing committee on finance,
18 we heard from Professor Tupman about his view
19 that there's accountant involvement. Canada's
20 risk assessment in 2015 talked about how the
21 risk of the accounting sector was medium. Where
22 the large number of practitioners with
23 specialized knowledge and expertise that may be
24 vulnerable to being exploited wittingly or
25 unwittingly.

1 I point out there that still, you know, you
2 can point to -- you look at the RCMP's CISC
3 paper, you look at the FINTRAC paper. Still we
4 have the frustrating position of not having them
5 reference specific cases or even narratives of
6 cases that seem to back up those statements.
7 And so I looked back to Steven Schneider's paper
8 where he, you know, looked at -- successfully
9 prosecuted accounting cases -- or successfully
10 prosecuted money laundering cases between 1993
11 and 1998. You have to understand too his sample
12 was before the application of these anti-money
13 laundering rules, so there's a bias to the
14 sample compared to -- not a bias but rather a
15 limitation to his sample because the structure
16 was not the same as it is today.

17 But, you know, one of the things that he
18 said that really resounded with me was that,
19 like a legitimate company, criminal
20 entrepreneurs must keep track of their revenues
21 and expenses as well as their assets and
22 liabilities. And ideally this job is best
23 carried out by somebody possessing accounting or
24 bookkeeping skills. This really fits well
25 within the research of Frédéric Compin; right?

1 It's a necessary skill. And he found that, you
2 know, in just about 10 percent of the cases
3 there was an involvement of an accountant,
4 either wittingly or not, and in half of the
5 cases there was involvement of a lawyer.

6 So, you know, that's -- to suggest that even
7 before there was a significant anti-money
8 laundering regime in Canada that there was that
9 level of professional involvement was indicative
10 to me that there must be -- that there was
11 likely more once the worldwide system became
12 more complicated in terms of its anti-money
13 laundering systems and controls.

14 So the next place you look, that I looked
15 was to say well, you know, are there published
16 criminal cases that help provide some insights
17 into whether or not accountants are being used
18 to launder money. And I've listed -- they're
19 anecdotes at best; right? I mean, the first
20 thing is that the research methodology was a
21 simple one. It was looking for the combination
22 of words within published cases. And there's a
23 lot of limitations of that methodology
24 considering that not all cases are published on
25 CanLII. Limitations are that, you know, there

1 aren't that many prosecutions. And so, you
2 know, is it a representative sample? Probably
3 not. Is it indicative of all accountant
4 involvement in money laundering? Absolutely
5 not.

6 But there are some anecdotes of indications
7 of what it does look like when it does happen.
8 We see in some of those cases the role of, you
9 know, just a bookkeeper scribe to
10 self-laundering to complicit laundering
11 throughout those cases.

12 Q And, Mr. McGuire, just so we have -- connecting
13 with what you're testifying to now in terms of
14 your report. I believe we've gotten to
15 paragraph 30 where you list and provide a very
16 brief description of ten reported cases, criminal
17 cases that were available at least on CanLII that
18 met those criteria that you were describing. And
19 you were explaining what -- the significance you
20 draw from these reported cases as a whole,
21 acknowledging that it's anecdotal.

22 Are there any particular cases that you
23 would highlight that illustrate any important
24 points from your perspective?

25 A Yeah, you know, sure. There's some that speak

1 to the types of money laundering that, you know,
2 we've talked about. You know, the one -- the
3 first listed there from 2020, it was interesting
4 that a civilian police agent became an
5 informant, and the role that he assumed within
6 the organized crime group that he penetrated was
7 one of the accountant. That shows the
8 significance of his -- of that role to the
9 scheme. It is a necessary function.

10 You know, we look at a fellow who was
11 self-laundering the next one, *Neilson*, where he
12 was laundering the proceeds of his own
13 securities fraud.

14 And I suppose I would just touch on the one
15 which is *PacNet Services*, where I understand
16 that there are still some proceedings ongoing
17 with PacNet, but what was interesting to me
18 about that reported case was that in a period
19 where PacNet was listed as a sanctioned entity
20 by the Office of Foreign Asset Control, it
21 attempted to and apparently succeeded in
22 depositing a draft from the UK into the trust
23 account of their accountant, which was
24 apparently a public accounting firm in BC.

25 And so, you know, it's only anecdotally that

1 accountants, the veil of legitimacy of
2 accounting firm bank accounts are used or
3 exploited to try to muddy the investigative
4 trail.

5 Q Mr. McGuire, what do you draw from the whole
6 combination of the theoretical models, the FATF,
7 other international bodies' reports, the academic
8 literature and then the reports and comments of
9 law enforcement and then these criminal cases
10 broadly? What do you draw from that and what
11 limitations are there in terms of being able to
12 accurately say the extent to which or how much
13 laundering may be occurring or what it looks like
14 in the accounting profession in Canada?

15 A Sure. Mr. Isaac, would you mind if I just
16 briefly refer to some of the research that I
17 mention a little later on in the report?
18 There's one more component of this that I think
19 would be useful to -- that helped inform my
20 conclusion, which is some of the professional
21 discipline cases in both BC and Ontario. Would
22 you mind if I highlighted just a couple of those
23 while I'm here?

24 Q Absolutely. Is there a portion of the report
25 that you'd like us to go to as a point, or ...

1 A Sure. I believe it's footnote -- it's on the
2 page where footnote 19 appears, I think.

3 Q Let me assist. I think that would make it
4 page 24, please. At the bottom there of page 24.

5 A Right. Yes. So, you know, one of the other
6 places to look -- you know, one of the things --
7 I mentioned the research that I helped
8 Ms. Ferraz with in terms of the security sector.
9 And so one of the things you can do to think
10 about money laundering is to first look at the
11 civil side of things; right? The extent to
12 which accountants are involved in civil frauds,
13 for instance, or instances where there are
14 proceeds from things that look like criminal
15 offences. And then the other place to look, you
16 know, I mentioned to her in the case of
17 securities was disciplinary offences, where it
18 might not show up as a reported money laundering
19 case but discipline cases give you some
20 indications about where there might be
21 involvement of the regulated members in
22 activities that would generate the proceeds of
23 crime. We talked about how, you know, dealing
24 with the proceeds of any designated offence
25 knowingly is money laundering.

1 And so there are a number of instances where
2 you look at professional discipline cases in
3 both Ontario and BC where these sort of
4 apparently criminal acts have occurred and that
5 the accountant is alleged to have dealt with
6 those proceeds. And so money laundering has
7 occurred and there's a whole host, I looked at
8 roughly 20 that I think are indicative in
9 Ontario. One involves a fellow that belonged to
10 a criminal organization that committed some
11 26 frauds and he assisted with the paperwork.
12 That was as recently as September 2020. Another
13 fellow with false and misleading financial
14 statements for his own financial gain in BC.
15 Again, fraudulent financial statements for gain,
16 frauds against employers, thefts.

17 So, you know, there were a fair number of
18 instances. I've summarized in footnotes -- in
19 footnote 18 related to BC the types of apparent
20 offences that these members were cited for and
21 that, you know, in a number of these instances
22 it would generate proceeds in those, and dealing
23 with those proceeds would be money laundering.

24 And so, Mr. Isaac, to get back to your
25 broader question, which is, you know, I don't

1 think anybody disputes that is a significant
2 amount of money that's being laundered. In the
3 ways that we believe the money is being
4 laundered or must be laundered to be able to
5 avoid scrutiny, accountant skill is necessary.
6 There are some anecdotal criminal cases that
7 show us that. There are some professional
8 discipline cases that show us that it's
9 happening.

10 And there's some early research that
11 demonstrates that it happened in Canada even
12 before anti-money laundering rules became
13 stringent and called out for the necessity of
14 professional assistance. And we have both the
15 international bodies and our domestic law
16 enforcement and our Financial Intelligence Unit
17 telling us that this is one of their -- the
18 primary risks that they're seeking to deal
19 with -- primary threats, rather.

20 So taken together, I conclude that there
21 must be significant accountant involvement in
22 money laundering far beyond which is reflected
23 by our STR numbers.

24 There's one more source that I think is
25 exceptionally important to this point which is

1 the suspicious transaction report numbers that
2 we see in the United Kingdom. I conducted an
3 analysis just, you know, apart from this study
4 of all countries and their compliance with just
5 basic analysis of countries compliance with the
6 same recommendations. You know, and one of the
7 front runners in constraining money laundering
8 and understanding money laundering risk by
9 accountants is the UK, who since 2017 have rated
10 the risk of accountants and money laundering as
11 high and, you know, with good empirical
12 evidence.

13 In 2000 -- you know, I mentioned that I
14 worked as a forensic accountant in the UK, you
15 know, and back in 2002 around the time I was
16 there, their statistics were quite low for
17 suspicious transaction reports as well. There
18 was only roughly a hundred in the course of a
19 year. And I recognize fully that their
20 accounting sector, their economy is it different
21 than our own. But, you know, once they started
22 taking very aggressive outreach measures and
23 implementing oversight over both regulated and
24 unregulated accountants, the numbers
25 skyrocketed.

1 But between 2002 and 2007, their suspicious
2 transaction report numbers rose from is 134 to
3 nearly 10,000 in a year. 10,000 suspicious
4 transactions reports a year from the accounting
5 sector. The number now hovers around 5,000 a
6 year, but it's a far cry from the zero that
7 we've seen in many of the years since the
8 requirements applied to accountants in Canada.

9 This I think supports the idea that
10 accountants are observing -- in the parts of the
11 world where they're receiving significant
12 outreach and enforcement oversight, they are
13 observing these crimes and these transactions
14 and are reporting them and it's leading to
15 certainly great outcomes in the UK.

16 Q I'd like to turn -- if we go up to page 14 of
17 your report, go to the second question that you
18 addressed, which was consideration of the
19 effectiveness of the existing regime here to
20 address potential accountant involvement in money
21 laundering.

22 So if I could begin by asking what
23 methodology did you use to consider and assess
24 the effectiveness of the regime to address
25 accountant involvement in money laundering in

1 Canada, and what was your basis for doing so?

2 A Sure. You know, it -- there was already a
3 roadmap laid out to evaluate effectiveness and
4 that's the international standards for
5 evaluating the effectiveness of the country with
6 respect to their designated non-financial
7 businesses of which -- and again, professions of
8 which accountants are a part.

9 And so I adopted their methodology
10 wholesale, and a part of that was because I
11 could -- you know, using that method I could
12 observe a trend. Canada has been subject to
13 effectiveness reviews against the FATF standards
14 before, and so I could look to the third
15 evaluation of Canada and the fourth evaluation
16 of Canada and look at little bit about how we
17 progressed from those first two evaluations to
18 now as a little bit of a checkpoint.

19 In the most recent methodology documents
20 from the FATF there are really -- there are two
21 ways that they look at our regime. The first is
22 to say do we technically adhere to the
23 standards. So do we cover the right activities,
24 and do we -- are the right activities -- are the
25 right obligations attracted to those activities.

1 And then the second part, which is a newer
2 development for the Financial Action Task Force,
3 is the idea that you don't just need to be
4 compliant, you actually have to achieve
5 something; right? So the second aspect is what
6 they call the effectiveness assessment that
7 says, are we producing the outcomes and results
8 that we need to be with respect to the
9 regulation of accountants. So not just are you
10 doing what we say you should do, but is it
11 working the way it's supposed to work.

12 Q Well, let's look at the first of those two
13 questions that you looked at. Beginning at
14 paragraph 36 and then continuing through to
15 paragraph 44 of your report, that entire section
16 addresses how an accountant is defined, whether
17 by the *PCMLTFA*, by FATF and by the provincial
18 regulatory bodies.

19 Why is so much ink spilled in your report on
20 this idea of what constitutes accounting services
21 to the public?

22 A Yeah. Thanks. You know, the idea is that all
23 obligations stem from this concept. There are
24 two -- you can imagine two ways of going about
25 regulating accounting services; right? You

1 say -- you know, the first way is to say you are
2 covered because of who you are in terms of your
3 designation and the second way is to say you are
4 covered because of what you do.

5 And so the approach taken in the legislation
6 is a little bit of a hybrid approach where it
7 says well, if you're an accountant, so you're a
8 designated accountant, you're subject to the
9 rules when performing particular activities.

10 And then the second bit is accounting firms
11 are those that provide particular services,
12 so -- but also have at their helm at least one
13 designated accountant. So it's a little bit of
14 a hybrid approach. And the problem is that all
15 of the obligations stem from this idea of, are
16 you an accountant or an accounting firm
17 considering these definitions. And an
18 accounting firm has this phraseology which is
19 it's an entity engaged in the business of
20 providing accounting services to the public.

21 So, you know, the question we dealt with
22 even in the guide -- in the guide as a committee
23 was the frustration that, you know, the federal
24 legislation said here's accounting services to
25 the public. You know, accounting firms are

1 those that provide accounting services to the
2 public. And then you say well, what does that
3 mean? There's no definition in the *PCMLTFA* to
4 tell me what accounting services to the public
5 are. There's no guidance that provides
6 information. FINTRAC's new glossary doesn't
7 have accounting services to the public.

8 And so, you know, part of my report -- and I
9 understand that part of the contentious part of
10 my report is what does that really mean, what is
11 providing accounting services to the public.
12 And the method that I followed, my thought
13 process was well, in the absence of a definition
14 in the act and in the absence of guidance or a
15 glossary that helps me understand, I went to the
16 provincial legislation and bylaws related to the
17 profession as I read them to try to get a better
18 understanding. And, you know, that's where a
19 lot of this -- a lot of the issue takes place is
20 in understanding who is covered, you know,
21 trying to flow through that definition.

22 And, you know, I say, Mr. Isaac, I spent a
23 fair amount of time thinking and dealing with
24 this, and it's still unclear to me. And so I
25 suppose that the point I want to take -- I would

1 love to be taken away from this part of the --
2 this section of the report is that it's
3 difficult. It's unclear who is covered
4 because of the definition. And certainly in my
5 view no matter which position you take about the
6 extent of what providing accounting services to
7 the public are, it would be hard to match up
8 still with the FATF's definition in any
9 province.

10 MR. ISAAC: I think it might be helpful, Hearing
11 Officer, if we could pull up exhibit 393 again
12 and go to page 20 of that.

13 Q And, Mr. McGuire, you were explaining this sort
14 of cascade of how do you determine whether or not
15 you're covered under the *PCMLTFA*. And if we
16 could go to page 20, please of this report. I
17 believe there's a sort of a waterfall diagram
18 under the heading "Do I Have Obligations As an
19 Accountant?" And could you just explain what's
20 shown -- what this indicates, and if you could
21 explain what the purpose of this is and walk us
22 through how an accountant would determine whether
23 or not they have obligations under the federal
24 anti-money laundering legislation?

25 A Yeah, I'd be glad to. Would you mind if we went

1 one section further? It's a little more helpful
2 in terms of -- I think in terms of what's
3 considered in term of an accounting firm rather
4 than accountant. Just --

5 Q Yes. Yeah.

6 A Right. 2.3.2. So, you know, the first thing
7 you say is, you know, do you provide accounting
8 services to the public? That's the first
9 question to ask. And in this guide we have
10 decided that the best reference to give would be
11 to the then CPA Alberta legislation where they
12 list out a number of services that are
13 considered a public accountant.

14 So if you don't provide those accounting
15 services to the public, then you are not
16 covered. So that's an important point is that
17 you could be providing qualifying activities --
18 you can think about those qualifying activities
19 that we spoke about -- and not be an accounting
20 firm and have no obligation under the
21 legislation. That is why I'm a big fan of
22 approaches that look to the services you provide
23 and not necessarily what designation you have.

24 And then the next question is so you might
25 provide accounting services to the public, but

1 you don't have an employee who is professionally
2 designated with a Canadian designation. So
3 picture, if you will, an accounting firm
4 where -- or a bookkeeping firm where the
5 individual at the helm of the bookkeeping firm
6 is a foreign trained chartered accountant. So
7 trained as a US CPA. Well, that firm would not
8 qualify once we get to this point in the table
9 because they don't have at least one of their
10 folks who are professionally designated with a
11 Canadian professional designation.

12 So then you get to the next point and you
13 say, well, do you perform transactions or give
14 instructions that involve triggering activities,
15 otherwise known as qualifying activities. Those
16 are those three there: receiving, paying or
17 transferring funds; purchasing, selling
18 property, business assets or entities;
19 purchasing, transferring, selling securities.
20 So you see the problem here is that -- next is
21 that this is performing the transactions, so --
22 or giving instructions, not advice. So if you
23 get to this point in the diagram and you
24 realize -- or in the waterfall diagram and you
25 realize that you're only giving advice with

1 respect to these things, you're still -- you're
2 not covered. Let's say that you are covered.

3 And then the next question is are you only
4 doing those things with respect to insurance
5 engagement or trustee in bankruptcy
6 appointments. And if the answer is yes, again
7 you're not covered.

8 So I had to -- you know, in this guide
9 together with CPA Canada we've spent, you know,
10 nearly four pages just to try to explain to a
11 person or a firm whether or not they even have
12 obligations. And, you know, I think you can see
13 as we go through the waterfall diagram that it
14 gets narrower and narrower to the point where it
15 might not capture all the concepts that the FATF
16 say are subject to a money laundering threat by
17 the sorts of services accountants provide.

18 Q Thank you. And if we could go back to your
19 report, which is exhibit 394, please. You had
20 indicated that in search of a definition of what
21 is accounting services to the public that would
22 inform an accountant trying to understand whether
23 or not they are engaged in activities under the
24 act, that it's not simple.

25 And I'd like to ask what's your

1 understanding of the level of awareness by
2 accountants of their obligations under FINTRAC.
3 And what is your basis for having that
4 understanding.

5 A You know, based on all the public accounting
6 firms that I deal with, have dealt with, have
7 been within and to regularly or sometimes come
8 for advisory services, I find the level of
9 understanding to be quite low. It was low in
10 2015, you know, and it was one of the reasons we
11 started the outreach activities, and similarly
12 now I believe there's a low understanding. And
13 to, you know, support that point, the number of
14 suspicious transaction reports filed by
15 accountants still tends towards zero in any
16 given year. Zero across the entire industry in
17 any given year. And there are virtually no
18 examinations by FINTRAC of accountants in any
19 given year. And we know that the
20 self-regulatory organizations don't conduct
21 examinations for the purpose of AML and
22 therefore I expect there has been very little
23 increase in knowledge over time by accountants
24 of their obligations or how to fulfill them.

25 Q Has FINTRAC -- are you aware of FINTRAC ever

1 expressing what their assessment of the level of
2 awareness of the obligations -- the AML
3 obligations are within the accounting profession?

4 A Sure. I mean, they expressed the same
5 frustration. When we invite them as the CPA
6 committee to talk to us about the level of
7 engagement and how we might increase that, they
8 also expressed their frustration with the lack
9 of understanding of obligations in accounting
10 firms.

11 Q You note at paragraph 44 of your report on
12 page 18 that FINTRAC has maintained that trustee
13 and bankruptcy services -- that those services
14 are specifically exempted from being triggering
15 activities, the triggering activities we were
16 referring to before. Do you know whether or not
17 there's a policy rationale for that exemption and
18 what the significance of that is, please.

19 A Sure. I understand, you know, in reading that
20 interpretation and a few other policy
21 interpretations and even in discussions with
22 them that the reason they had decided to exempt
23 insolvency was the idea that there was very
24 little risk of money laundering. And if there
25 was a risk of money laundering, it was

1 constrained by the fact that there was court
2 oversight of the processes. And perhaps even
3 furthermore that, you know, when an insolvency
4 trustee was involved that they were acting for
5 themselves and the court, not for the
6 individuals involved.

7 You know, since that time, I think our
8 understanding of insolvency and the risk of
9 money laundering has become far more
10 sophisticated. If you look at, for instance,
11 the Sequest case back in -- their bankruptcy
12 was in within. It was -- Sequest was a Ponzi
13 scheme and clearly a money- laundering operation
14 that tried to exploit insolvency laws for the
15 purposes of laundering funds and concealing
16 their Ponzi activities.

17 I was just researching some of the extent of
18 bankruptcy and money laundering in Canada. You
19 know, the statistics are quite significant.
20 There is an integrated bankruptcy team of the
21 RCMP that looks to enforce bankruptcy fraud and
22 related money laundering and they're -- since
23 2012 there's been 184 separate cases. So I
24 think the risk is now more poignant than it has
25 been.

1 In the UK a few of the cases that they're
2 observing now with the benefit of 5,000
3 suspicious transactions in the years that, you
4 know, money launderers are becoming so brazen as
5 to use court cases to purposely lose to each
6 other for -- one loses to the other, for
7 instance, to able to launder funds. To put the
8 illicit proceeds through the court and to get
9 its veil of legitimacy. So I'm not a fan of the
10 exemption, but I understand why they put it in
11 place in the first place.

12 Q To understand, in your view is there something
13 lost -- even if there is another form of
14 supervision and the court supervision of
15 bankruptcy services in Canada, is there something
16 that may be lost from an intelligence
17 perspective, by FINTRAC perhaps, not having
18 visibility through reporting from those sorts of
19 activities?

20 A Yeah, it's a very good point. You know, despite
21 the involvement of a trustee, the fact that the
22 trustee doesn't have the obligation to report
23 those observations to FINTRAC, it lessens the
24 intelligence available to FINTRAC to connect
25 those dots. So that would be a prime motivator,

1 I think, for including them among those that
2 must report.

3 Q Thank you.

4 MR. ISAAC: Mr. Commissioner, looking at the time, it
5 is almost 11:00. We do have requests and
6 allocations for questions from participants of
7 2 hours and 15 minutes today. I do think that I
8 will try to work through the remaining evidence
9 as efficiently as possible, but there may be a
10 potential of perhaps running long. And I just
11 want to just pause at this moment and see
12 whether or not that raised any issues for the
13 commission, potentially running 15 to 30 minutes
14 long today.

15 THE COMMISSIONER: No. I have a meeting scheduled,
16 via Zoom of course, for 2:30 today, but if we
17 can conclude proceedings by then, then I think
18 that's just fine. And I expect the meeting
19 could probably be shifted later too, if that's
20 necessary.

21 MR. ISAAC: I think it won't be, Mr. Commissioner. I
22 expect we won't need to run more than half an
23 hour long, if everyone is able to stick to their
24 estimates this afternoon. But I did want to
25 make sure that that was okay before we continued

1 further today.

2 THE COMMISSIONER: No, that's fine. Thank you. Do
3 you want to take 15 minutes?

4 MR. ISAAC: Yes. Actually, now would be a good time
5 for that. Thank you.

6 THE COMMISSIONER: All right. We'll do that.

7 THE REGISTRAR: The hearing is now adjourned for a
8 15 minute recess until 11:14 a.m. Please mute
9 your mic and turn off your video. Thank you.

10 **(WITNESS STOOD DOWN)**

11 **(PROCEEDINGS ADJOURNED AT 10:59 A.M.)**

12 **(PROCEEDINGS RECONVENED AT 11:14 A.M.)**

13 THE REGISTRAR: The hearing is resumed,
14 Mr. Commissioner.

15 **MATTHEW MCGUIRE, a**
16 **witness for the**
17 **commission, recalled.**

18

19 THE COMMISSIONER: Yes, Mr. Isaac.

20 **EXAMINATION BY MR. ISAAC (continuing):**

21 Q Mr. McGuire, before we move on from the topic of
22 technical compliance, which we were discussing
23 before the break, if you could turn to page 20 of
24 your report, please.

25 A Certainly.

1 Q Thank you. And this is a table. And would you
2 just explain what this table illustrates in terms
3 of your assessment of that question of technical
4 compliance.

5 A Sure. So really I was trying to break down this
6 table, just my understanding of the FATF
7 recommendation to the *Proceeds of Crime (Money*
8 *Laundrying) and Terrorist Financing Act*. And so
9 I broke it down into a few separate points;
10 right? The first was what were the accounting
11 services that would subject them to both fitness
12 and anti-money laundering supervision. So
13 supervision for -- of the membership and
14 anti-money laundering supervision. And so I've
15 listed those there, which the FATF would see on
16 a risk-sensitive basis included.

17 And then you can see that, you know, my
18 analysis is fairly absent in the right-hand
19 column for the Canadian legislation because it
20 is, in my view, a province-by-province analysis
21 in the absence of a FINTRAC definition or a
22 legislative definition specifically.

23 And then the next bit I've mentioned is the
24 level of involvement of the accountant. So I've
25 mentioned that in Canadian legislation it says

1 that accountants are covered when they
2 provide -- engage in or provide instructions,
3 and it excludes that which the FATF says the
4 standard should be expanded to, which is both
5 preparation for or carrying out the transactions
6 for the specified activities.

7 The next element of the FATF definition or
8 expectation and recommendation is really around
9 the specific activities, this whole concept of
10 qualifying or triggering activities, those for
11 which the obligations would apply.

12 And so you can see the analysis of what is
13 the FATF expectation that accountants would be
14 covered with buying or selling real estate or
15 preparing for those things, managing of client
16 money securities or assets, management of bank
17 savings or securities accounts, organizational
18 contributions for the creation, operation or
19 management of companies. And I again would
20 stress both the conduct of those activities and
21 the preparation of those activities which, in my
22 view, includes advice.

23 And then creation and operation and
24 management of legal persons and arrangements and
25 buying and selling of entities. And then -- so

1 you compare those -- that list against the list
2 in Canada's legislation. There are many
3 similarities. You know, you see the
4 organization of -- that there's a distinct
5 absence here when we talk about (d) and (e)(i).
6 And those -- you know, I understand again that
7 these are -- these functions may involve the
8 practice of law, and I just again hasten to
9 point out that the preparation for those
10 activities may not be considered the practice of
11 law and therefore that they would rightfully be
12 included in the legislation.

13 And then the last the last row spills on,
14 Mr. Isaac, to the last page -- or to the next
15 page.

16 Q Yes. If we could scroll forward. Thank you,
17 Hearing Officer.

18 A It says -- so it's -- what are the activities
19 that are subject to suspicious transaction
20 reporting. The FATF would expand it to the rest
21 of the professional activities, including
22 auditing. So what it's saying is that for the
23 purpose of the legislation implemented by the
24 country, that you wouldn't -- that even in cases
25 where you'd -- even in cases where you might

1 exclude certain activities by an accountant
2 from, say, identification requirements, you
3 would still extend the requirement to report
4 suspicious transactions when observed. And in
5 Canadian legislation it's -- you know, it very
6 narrowly says that only those specified
7 activities are subject to suspicious transaction
8 reporting, not the balance. And insurance
9 activities and insolvency are specifically
10 exempted.

11 Q Thank you. And you conclude this section at
12 paragraph 48 by stating that based on your
13 assessment Canada's regime regarding accountants
14 is technically not compliant with FATF
15 recommendations. Is that right?

16 A Yeah, that is my conclusion. And it's
17 consistent with the FATF's own conclusions, the
18 third and fourth mutual evaluation of Canada
19 came to the same conclusion in terms of those
20 gaps.

21 Q Okay. I'd like to move on now to that second
22 component of the FATF assessment approach that
23 you described. And that begins at the heading
24 7.5 under "Consideration of Effectiveness." And
25 the first subheading there immediately below is

1 "Monitoring and Oversight of Compliance." Why
2 are those topics important?

3 A Yeah. So the idea is that, you know, you can
4 have all the standards you like, but if nobody
5 is enforcing them, there's likely to be less
6 adherence to them; right? And so the monitoring
7 and supervision is really about making sure the
8 things that we need to happen are happening.
9 And so, you know, we look again at all the focus
10 of these -- or the new focus of the FATF
11 evaluation is outcomes. And so much like in an
12 AML program within an accounting firm -- I tell
13 everyone as well as banks and credit unions, you
14 know, conducting an examination of your own
15 program against the standards you create is
16 essential to make sure it stays on the right
17 track.

18 And so similarly, the oversight of adherence
19 to anti-money laundering standards is essential
20 to making sure that it happens in the way that
21 we would hope it happens.

22 Q And you note in this section that one of the
23 principal deficiencies noted by the FATF, both in
24 its third and fourth evaluation of Canada's AML
25 regime regarding accountants, does relate to this

1 questioning of monitoring and oversight. Would
2 you please explain that further. What has the
3 FATF -- how has it judged those two aspects of
4 monitoring and oversight currently as they are
5 carried out in Canada with respect to
6 accountants?

7 A Yeah. You know, it's a very consistent theme.
8 So, you know, they point out rightly that there
9 is an effective regime over the fitness of
10 participants in -- of accounting participants to
11 the extent that they're covered, but that the
12 self-regulatory organizations do not deal with
13 anti-money laundering. And so we're entirely
14 dependent on FINTRAC to monitor -- provide
15 monitoring and oversight with respect to
16 anti-money laundering. And they said in their
17 third mutual evaluation in 2008 that, you know,
18 limited staff resources deprives FINTRAC of
19 closely and effectively monitoring the
20 designated non-financial business and
21 professionals compliance with the *PCMLTFA*
22 compliance especially in sectors and provinces
23 where primary regulators or self-regulatory
24 organizations are not or are insufficiently
25 involved in anti-money laundering and

1 counterterrorist financing compliance
2 supervision.

3 Q And, Mr. McGuire, that is a quote I believe
4 you've cited at paragraph 53; is that correct?

5 A That's right. A direct -- that's a quote from
6 the third mutual evaluation. That's correct.

7 Q So what -- in the next section of your report
8 beginning and page 54 you describe the level of
9 FINTRAC's efforts to assess compliance of
10 accountants and accounting firms in Canada. And
11 would you please explain what you refer to here
12 in terms of what those efforts have looked like.
13 You make reference to a survey as well as the
14 statistics around actual examinations by FINTRAC
15 of accountants and accounting firms. If you
16 could explain what's shown there. And I think
17 it's paragraph 54 in particular where this
18 information is presented.

19 A I see that here now. Thank you. Well, you
20 know, in its early days FINTRAC did what
21 would -- you know, it took a very rational
22 approach to the initiation of compliance
23 proceedings; right? I mean, the first thing you
24 want to do when you regulate a large group of
25 people is try to first of all gather a list of

1 who those all are and then second try to
2 understand the risk that they pose. So the
3 first thing they did, you know, was to survey
4 accountants and accounting firms with a view to
5 having their -- attest themselves to their own
6 level of compliance with the standards.

7 That was a split exercise between 2006/07
8 and 2011/12. And so -- and it was across
9 sectors. You know, one of the things that's
10 surprising to me was, you know, first that the
11 response rate was only 75 percent. That's --
12 you know, the 25 percent, there was no
13 questionnaire for is surprising to me. But
14 then, you know, that exercise, this survey
15 exercise is useful for that initial mapping of
16 the players, the relevant players in the sector
17 and their attestation of their own risk.

18 But where the rubber really hits the road is
19 when you conduct a desk or an in-person
20 examination. It gives the opportunity of the
21 examiner to take a deep dive into the program
22 structure, the records, conduct interviews to
23 assess the level of understanding and start
24 pushing towards a more mature compliance program
25 at the entity. You know, and also gives the

1 opportunity to observe, you know, areas where
2 firms are clearly not at all committed to
3 compliance. Understand a little bit more about
4 the culture to develop further information about
5 how to direct future examinations. And these
6 statistics are low.

7 You know, you see in that paragraph 54 that
8 there were -- there's a few years where there
9 were no examinations. In -- for the last couple
10 of years we know about there were -- in
11 2013/2014 there were 11. In 2014/15 there were
12 10. In some of the materials that I've seen
13 submitted have suggested that in BC alone there
14 are 80,000 folks who identify as accountants.
15 Ten examinations seems low.

16 And, you know, I'm not -- that's not just my
17 opinion. The FATF observes similarly; right:
18 If you wouldn't mind me quoting in paragraph 55:

19 "Quite obviously, such a limited number of
20 on-site examinations made by FINTRAC
21 compared with the number of potential
22 reporting entities cannot be considered as
23 sufficient to ensure an effective
24 monitoring of compliance even if FINTRAC
25 targets its examinations based on a

1 comprehensive risk assessment."

2 Q And in -- sorry, go ahead.

3 A Yeah. It goes on to say:

4 "It should be completed by interventions
5 of provincial regulators or SROs.

6 However, these institutions are not in
7 charge of ensuring AML/CFT compliance, and
8 as for the other sectors examined above,
9 their level of involvement in that area,
10 the regulatory basis on which they rely
11 and the methodology adopted may strongly
12 differ from one province ... to another."

13 Q You go on, Mr. McGuire. You mentioned the 80,000
14 sort of number of the entire universe of those
15 carrying out accounting services in
16 British Columbia. That includes both designated
17 and not professionally designated accountants; is
18 that right?

19 A That's right.

20 Q Okay. If we look at the number, the universe of
21 designated, those who might have reporting
22 obligations under FINTRAC. Based on the
23 examinations statistics that you have, what
24 percentage of the profession had been subjected
25 to the sort of deep-dive compliance examination

1 that you refer to?

2 A Yeah. Well, based on the FATF's derivation of
3 the number of relevant entities and those
4 FINTRAC statistics, and then assuming there were
5 no repeat examinations, then, you know,
6 something less than 4 percent of all reporting
7 entities have been subject of an examination
8 from 2004 to 2016.

9 Q I'd like to turn to the question of what those --
10 appreciating it's a limited number, but what the
11 compliance examinations that FINTRAC did carry
12 out indicated in terms of compliance deficiencies
13 or other issues. And I think we do provide some
14 information at paragraph 58 of your report as
15 well as reference to paragraph 59.

16 Would you just explain for the Commissioner,
17 please, what these data indicate and what those
18 compliance examinations that were conducted
19 revealed in terms of the compliance within the
20 profession?

21 A Sure. So, you know, knowing how many
22 examinations were conducted and then having some
23 access to information results in statistics in
24 terms of the deficiencies that were observed.
25 You can derive the percentage of firms with at

1 least one structural deficiency. And so a
2 structural deficiency is one of -- we refer to
3 them as anti-money laundering pillars. You need
4 to have somebody in charge, the designated
5 officer; you need a set of policies and
6 procedures; you need training; you need a risk
7 assessment and management plan; and you need
8 some mechanism to evaluate whether or not you're
9 complying with the standards over time.

10 And so I draw on the statistics to say well,
11 you know -- that was inspired by the UK
12 approach; right? Where they actually evaluate
13 themselves based on how these statistics
14 progress over time, that is how many firms get
15 better as they examine. What is the -- they
16 even break it down to -- on a firm-by-firm
17 basis, how do the statistics improve.

18 So these statistics are a little bit of a
19 jumble from that perspective. You know, what
20 you can draw is that in some years virtually all
21 of the examined entities -- look at 2012/2013.
22 You know, 23 of 25 entities examined had one
23 structural -- one of five of their pillars of
24 their program had a structural deficiency. You
25 know, that's up from 2008/2009 where there were

1 only 38 percent and -- but then there were
2 64 percent in 2013/2014.

3 It's hard to establish a trend line here
4 with these numbers, but what you can say is that
5 there are consistently structural deficiencies
6 in the accounting firms that are examined.

7 And if you were -- if you don't mind,
8 Mr. Isaac, I might add. If you observed this,
9 then your assessment of compliance risk in a
10 sector should escalate. If you observe
11 inconsistent compliance especially with the
12 framework elements of compliance, I think
13 naturally as a regulator you might assume that
14 that sector is riskier and refocus your efforts
15 there.

16 Q Now, I understand you referenced earlier that in
17 your capacity as chair of the -- CPA Canada's AML
18 committee, in 2015 FINTRAC -- you invited FINTRAC
19 to provide a presentation and to engage with CPA
20 Canada on some of these issues. What was -- did
21 FINTRAC explain what their assessment of the risk
22 was at that time of the sector and why -- or
23 their view of the sufficiency of the level of
24 these compliance examinations?

25 A Well, I mentioned that there was that one

1 particular meeting where we invited FINTRAC to
2 attend and, you know, one of the things they
3 said -- they mentioned, as you point out, that
4 the level of awareness among accountants was
5 surprising, that many didn't even know they were
6 covered. They also expressed frustration with
7 the level of non-compliance.

8 When they talked about risk, it was
9 difficult. You know, I'm surprised at the risk
10 assessments that were being bandied about at
11 that time. I recall from having refreshed with
12 the meeting minutes that, you know, they talked
13 about it being a low to a medium sector. And,
14 you know, that was surprising for a number of
15 reasons. One of which was that, you know, the
16 national threat assessment drafts were already
17 calling the accounting sector at least a medium
18 risk.

19 Second is the level of compliance, as I
20 point out. I suppose if you were to point to a
21 third, you know, FINTRAC had commissioned a
22 study by Grant Thornton of the risk of each
23 sector. And, you know, the accounting sector
24 was ranked as higher risk along with real estate
25 even back in 2014. So I recall that their

1 discussion about risk in the accounting sector
2 at that point while they expressed frustration
3 with the level of compliance, it didn't seem as
4 though they were prioritizing it in terms of
5 examinations.

6 Q And I think -- was it in that same meeting that I
7 think you'd referred to earlier an indication
8 from FINTRAC that they had assessed the level of
9 awareness within the profession as not -- well,
10 what was their assessment? What did they
11 communicate? What did FINTRAC communicate to
12 you?

13 A There was a low level of understanding of --
14 that the obligations existed and what they were.

15 Q Actually, it may be helpful if we pull up,
16 please, the document at tab 35 of the index.
17 That's CPAC65. And if we could go to page 8 of
18 this document. And what I'm going to show you,
19 Mr. McGuire, are the minutes that were produced
20 by CPA Canada in reference to this presentation.
21 You'll see there's -- we're looking at the front
22 page here March 4, 2015. Do you recognize those?

23 A I do.

24 MR. ISAAC: Okay. If we can have that marked as the
25 next exhibit. I think that will be exhibit 395.

1 THE COMMISSIONER: Very well.

2 THE REGISTRAR: Exhibit 395. Is that just that page,
3 Mr. Isaac, or the ...

4 MR. ISAAC: It will be a subset of that, Madam
5 Hearing Officer, but it begins at page 8. I
6 understand that this document is a collection of
7 attachments that were attached to this email.
8 But we'll -- maybe if we could scroll through
9 it, I'll identify specifically the minutes.

10 So it's pages 8, 9 and 10, 11, 12, 13, 14.
11 And I think that's the complete, at least for
12 the purposes of the questions that I have to
13 ask.

14 **EXHIBIT 395: CPA Canada Anti-Money Laundering &**
15 **Anti-Terrorist Financing Committee Meeting**
16 **Minutes March 4, 2015**

17 MR. ISAAC: And if we could go back, please, up to
18 page 8. Thank you.

19 Q So if we just scroll down. There's a reference
20 here to the FINTRAC session, and those are the
21 representatives of FINTRAC that came to present
22 to the AML committee, Mr. McGuire?

23 A Lisa Douglas and Frank Lofranco.

24 Q Okay. Thank you. And if we could scroll down,
25 please, to the next page. And I won't take you

1 through all of this. There appears to be a
2 presentation that was made.

3 And if we could go to page 10, please. And
4 there's a bullet -- a series of bullet points
5 under the table there. And, Mr. McGuire, you
6 recall there presenting those compliance
7 statistics to the committee?

8 A I do.

9 Q And those are consistent -- generally consistent
10 with your own -- the numbers that you had as
11 well?

12 A That's right. I did a quick check of the
13 figures and they are consistent with the ones
14 that I derived.

15 Q Okay. And you'll note that at the first point
16 under the bullet -- under the:

17 "FINTRAC informed the Committee that it:

18 - Has assessed the accounting sector to
19 be a low-risk sector. Higher-risk
20 sectors, such as casinos, would be
21 subject to more regular, cyclical
22 exams."

23 Is that what you were referring to earlier?

24 A That was, yes.

25 Q Okay. And if we look down at the second,

1 third -- fourth bullet point there. There's a
2 reference to FINTRAC believing that some
3 accountants and firms have not realized they are
4 covered under the legislative requirements. Do
5 you recall that perspective being shared by
6 FINTRAC?

7 A I do.

8 Q And then if we look down the sixth -- sorry, the
9 seventh bullet point, is FINTRAC "did not believe
10 that the accounting sector has ever filed a
11 Suspicious Transactions Report." Do you recall
12 that?

13 A I do. At that point we had asked them to come.
14 We had a series of questions that we had put to
15 FINTRAC in advance of them arriving. One of
16 them was asking for suspicious transaction
17 statistics and a flavour of what had been
18 reported. And he had come with that point
19 suggesting that none had been filed and
20 therefore he couldn't provide a summary of
21 those. But I hasten to point out that you'll
22 see that, you know, in later parts of my report
23 you'll see that some had been reported by that
24 point, but there was very few.

25 MR. ISAAC: Thank you. I don't have any further

1 questions about this document. If we could go
2 back to Mr. McGuire's report, please.

3 Q And that is what I'd like to turn to now, which
4 is the question of the level of suspicious
5 transaction reporting. And if we could go to
6 paragraph 72 of your report.

7 A Certainly.

8 Q And here this portion of your report,
9 paragraphs 72 through 76, addresses this question
10 of the level of STR reporting from the accounting
11 sector. And what has been -- if you could
12 describe the level of STR reporting to date from
13 the accounting sector.

14 A It's been sparse. You know, Mr. Isaac, the
15 suspicious transaction reports are seen as a key
16 outcome of the system working. You know, the
17 idea is that if you're ID'ing your client and
18 you understand who they are and you monitor
19 their transactions over time, you are in a very
20 good position to identify suspicious
21 transactions. And so the absence of suspicious
22 transactions, you know, the first port of call
23 is to suggest that, you know, the system isn't
24 designed properly. That the way somebody's
25 going about something isn't right, they're not

1 identifying the right client, they're not
2 understanding their activities properly, they're
3 not monitoring them intensely enough.

4 The point of suspicious transaction reports
5 is to provide the intelligence to FINTRAC to do
6 with the job. And extent to which that outcome
7 isn't achieved is depriving intelligence units
8 of the intelligence it needs to perform its
9 function.

10 Q Thank you. And I won't take you through those
11 numbers, but you do summarize at paragraphs 74
12 and 75 the numbers of STRs that had been filed
13 from the sector; is that right?

14 A Yeah, that's right. You know, we're down to --
15 the last statistic we had was at 2018 when a
16 single suspicious transaction report was filed
17 across the entire accounting sector.

18 Q And what has been the FATF's assessment of the
19 adequacy of that level of reporting in its
20 evaluation of Canada's regime?

21 A When they -- their last examination, to quote
22 them, they said, you know, looking at
23 paragraph 75:

24 "The accountants' level of awareness of
25 AML/CTF is quite low."

1 And:

2 "The fact that no STRs have been filed by
3 accountants and BC notaries --"

4 In the period -- in that period they were
5 looking at.

6 "-- and the low number of STRs received
7 from the real estate sector raise
8 [concern]."

9 Q Thank you. And what does the level of -- you've
10 averted to this already, but what does the level
11 of suspicious transaction reporting among
12 accountants tell you about the effectiveness of
13 Canada's AML regime? I mean, one inference you
14 could draw is that is just an accurate reflection
15 of the exposure of accountants in Canada to
16 suspicious transactions. What is your -- what is
17 your assessment? What inferences do you draw
18 from these statistics?

19 A I don't get to that place. You know, as I
20 mentioned before, given the extent of money
21 laundering in the country I expect that there is
22 accountant involvement or view of these
23 activities.

24 I believe there are two sources -- three
25 principal reason why the suspicious transaction

1 reporting isn't happening. One is that, you
2 know, there is a lack of understanding that
3 there are obligations involved.

4 Second, that the qualifying activities are
5 defined so narrowly that even when accountants
6 observe the activity, they don't report because
7 the qualifying activity standards don't occur.

8 And then, three, because there is no
9 consequence for not reporting because of the low
10 level of examinations and the complete absence
11 of any administrative penalty applied to any
12 accounting firm that I know of.

13 There's no statistics from FINTRAC that I've
14 seen that shows that there's been any penalty
15 applied to an accounting firm since they start
16 the applying penalties in 2009. And I would
17 point out that, you know, even when you look at
18 the level of deficiencies that I'm talk about,
19 and the deficiencies when they talk about
20 foundational items, those pillars, these were
21 serious deficiencies, and yet I examined the
22 discipline cases from Ontario and BC CPA
23 associations and found no reference to
24 anti-money laundering deficiencies among those
25 discipline cases. So, you know, as I say, it

1 appears as though there's no consequence to not
2 report it.

3 Q Now, you did mention earlier how these numbers
4 may compare. And I appreciate it's not a
5 scientific comparison given the different
6 economies and perhaps some different practice
7 scope, but in terms of looking at other
8 jurisdictions, you know, how -- are these numbers
9 generally consistent with what other
10 jurisdictions that have accounting sector
11 reporting under their AML regimes?

12 A Excellent question. That is -- when I was
13 looking into this after having created the first
14 version of this report, you know, that was the
15 principal question I had was, you know, is this
16 being done well somewhere else. And, you know,
17 there are a few jurisdictions that stand out as
18 having truly embraced the FATF standards, the
19 recommendations on this subject. The UK is the
20 best at this so far. And as I say, you know,
21 they're tending towards a level of 5,000
22 suspicious transaction reports a year.

23 Their structure is different. They actually
24 have far more accounting bodies to deal with.
25 They've developed an office of professional

1 supervision related to just anti-money
2 laundering where there is an intense amount of
3 examination and close tracking of the
4 progression in firms.

5 The other thing they do that I think is a
6 fascinating concept we'd do well to adopt is the
7 concept of a money laundering reporting officer.
8 And in speaking with my old colleagues in the UK
9 about how this played out over time, the money
10 laundering reporting officer is an independent
11 role within a financial institution that has
12 protections against -- whistle-blower style
13 protections but has personal liability for
14 failure to report. And so what happens in
15 these -- in especially, you know, mid to larger
16 size accounting firms is that this individual is
17 appointed and has a budget and will actually
18 look into the affairs of other of their partners
19 and actively look to identify what might be
20 suspicious to independently report it.

21 I think that function is making a big
22 difference towards the statistics. Belgium
23 reports in the hundreds every year. Norway
24 similarly. Bermuda has taken amazing steps to
25 increasing the reporting of its country. So

1 understand what unusual looks like.

2 You know, the specified activities should be
3 subjected to ongoing sanctionless screening
4 against Canadian sanctions. That, you know, if
5 we're involved in payments or giving advice
6 around payments and systems, we should be
7 looking to make sure that the people that we're
8 dealing with aren't people that for a policy
9 reason Canada has issue with.

10 90 is one that I would be very keen on is
11 the idea of a registry of folks that perform the
12 qualifying activities. In large parts that we
13 know the population of those that do and that
14 FINTRAC -- improve FINTRAC's ability to keep
15 tabs on those and to conduct examinations even
16 beyond those with designations.

17 You know, in the -- I mentioned that I've
18 looked at the countries that have been
19 successful in increasing their suspicious
20 transaction reporting numbers and with their
21 technical compliance and with their outcomes
22 with FATF. And what they have in common is the
23 agreements between the financial intelligence
24 unit and the self-regulatory organizations to
25 share intelligence so much so that in Bermuda

1 their accounting -- their primary accounting
2 body is the recipient of disclosures from their
3 financial intelligence unit.

4 And imagine the power of having that
5 intelligence in trying to -- in dealing with
6 maintaining the fitness of your membership. I
7 see that as a very powerful idea. And the
8 sharing of that risk intelligence would help
9 self-regulatory organizations educate their
10 membership and ideally help with some more
11 common ground in terms of the way risk
12 assessments are approached.

13 Listen, 92 is controversial. I'm sure it
14 suggests that self-regulatory organizations
15 should conduct -- should include in their
16 practice inspections compliance with anti-money
17 laundering standards and not just FINTRAC. And
18 I say this with a fair bit of precedent in hand.
19 You know, you look at, for example, credit
20 unions where FINTRAC conducts a regulatory
21 analysis and the deposit insurer or the -- or
22 the regulator of credit unions in FSRA in
23 Ontario, FICOM in BC, conducts anti-money
24 laundering analysis for prudential purposes to
25 understand the risk of the profession of what's

1 being conducted.

2 And it should at least include -- even, you
3 know, the law society is a wonderful group that
4 conducts analysis of trust accounts or activity
5 and conducts anti-money laundering analysis.
6 You know, this could be a very easy win, I
7 think.

8 As a CPA I have to fill out an annual
9 declaration form about the professional
10 development that I do. I have to describe the
11 sorts of activities I'm involved with. I think
12 it would be useful during that process a
13 self-regulatory organization also required of
14 its members to declare its involvement in
15 triggering activities, so it can isolate and at
16 least know the population that it's dealing with
17 in terms of anti-money laundering
18 vulnerabilities.

19 In 94 I talk about how I would like
20 self-regulatory organizations to require members
21 to self-report FINTRAC cited deficiencies. In
22 some of the submissions I have seen since my
23 report it appears that it may actually be a
24 requirement, although in practice I wonder if
25 that's known by members and could be made more

1 explicit.

2 I do point out that, you know, there are
3 deficiencies that FINTRAC has observed that are
4 serious in nature, and I can find no related
5 disciplinary case. That may mean that it wasn't
6 considered serious enough to publish, but I have
7 no information to be able to conclude otherwise.

8 The international standards suggest that
9 there should be guidance. And both the
10 international accounting standards and
11 international AML standards suggest that there
12 should be guidance with respect to handling the
13 property of others, which I understand is
14 underway.

15 There should be, you know, more guidance and
16 references in the practice materials, including
17 the practitioners' toolkit where it is a toolkit
18 that's prepared by the institute that is
19 designed to help a practitioner figure out how
20 to operate their business, and there is no AML
21 guidance within it or sparse AML guidance within
22 it. If the guide is updated and provides more
23 workable tools, that may be a useful supplement
24 there.

25 And then (d) is prohibit the acceptance of

1 significant amount of cash in a way that mirrors
2 the law society rules. I think that would go a
3 long way to increasing the perception of
4 management at risk at least.

5 The last recommendations I have here are for
6 the operations of FINTRAC. It's clear from my
7 report I'm no fan of the risk-based approach
8 guidance for accountants. What they call is a
9 workbook is not a workbook. A workbook should
10 enable to firm to be able to document its risks
11 in a systemic and decision-logic driven way, in
12 a way that's informative. There are too many
13 anecdotal examples. And, you know, when it
14 comes down to it if we have a limited class of
15 qualifying activities, the risk assessment could
16 easily take reach of those activities and
17 suggest what risks are associated and what
18 measures might be taken to deal with those
19 risks.

20 I mentioned that, you know, it would be
21 useful if self-regulatory organizations would be
22 disclosure recipients of FINTRAC so that the
23 self-regulatory organizations have that
24 intelligence, both from a macro level and from
25 their ability to maintain the fitness of the

1 membership. And clearly there needs to be more
2 examinations in the sector to be able to ensure
3 compliance and understanding and to lead to more
4 consistent compliance results when examinations
5 occur.

6 MR. ISAAC: Thank you, Mr. McGuire.

7 Mr. Commissioner, those are all of my
8 questions for the witness.

9 THE COMMISSIONER: All right. Thank you, Mr. Isaac.
10 I think now we have Mr. Pratte on behalf of the
11 Professional Accountants of Canada.

12 MR. PRATTE: Thank you, Mr. Commissioner.

13 THE COMMISSIONER: Yes. Thank you, Mr. Pratte.

14 **EXAMINATION BY MR. PRATTE:**

15 Q Mr. McGuire, can you see me and hear me okay?

16 A Perfectly. Thank you, Mr. Pratte.

17 Q All right. Thank you. And I am a bit low tech,
18 so you'll forgive me if I have -- I'm not quite
19 as adept as Mr. Isaac in taking you to pieces of
20 evidence. We had actually -- no good deed goes
21 unpunished.

22 MR. PRATTE: We've prepared a compendium,
23 Mr. Commissioner, to try to ease our way to a
24 few of the documents I want to take the witness
25 to. I understand that your commission functions

1 more efficiently than I, and so what we are
2 trying to do is I will refer to the compendium
3 that I have but I don't think it's in the
4 commission's hands per se, although counsel has
5 it. And my colleague Ms. Effendi or
6 Ms. Krajewska will refer to the document number
7 in your record and put it up. And I hope that
8 that will work out sufficiently, efficiently.

9 Q Is that okay with you, Mr. McGuire?

10 A It suits me fine. Thank you.

11 Q All right. Thank you. And I don't think
12 actually in anything I'll show you there will be
13 any surprises. Some the documents my friend has
14 already taken you to.

15 So, sir, first of all, you know the
16 organization that I represent since you were a
17 consultant to it, a member of the committee that
18 you referred to, between -- around about 2013 to
19 2016. Right?

20 A That's right.

21 Q And you know that as we'll get -- discuss in a
22 bit, that organization represents around about
23 217,000 chartered professional accountants in the
24 country?

25 A Yes.

1 Q And just from what you said a little earlier just
2 referring to BC, I think that you said there were
3 about 80,000 people in that province who call
4 themselves or represent themselves to be
5 accountants. And that the chartered professional
6 accountants are a subset of that; is that right?

7 A Yes.

8 Q And would I be correct in suggesting to you that
9 roughly -- the proportions would be out of that
10 80,000 that roughly about a third would be
11 chartered professional accountants?

12 A That's what I read from the CPA BC materials,
13 yes.

14 Q And based on your long-term experience you agree
15 with those numbers? I mean, roughly speaking
16 we're not arguing about percentage points here.

17 A Sure. Sure.

18 Q And would that be true as well, so far as you
19 know, nationally? That is to say that there are
20 a lot more non-chartered professional accountants
21 who call themselves accountants than there are
22 those who are accredited?

23 A Yeah, I would agree with that. Sure.

24 Q Okay. Now, just before we get into your report,
25 I just want to make sure because I know you filed

1 a revised corrected report, I think it was
2 roughly last week. But do you have any further
3 corrections or additions to make to your revised
4 report today?

5 A You would have noticed -- yes. So you would
6 have noticed that in one of the quotes that I
7 recited from the FATF the last word was
8 "control" in my report and it said "concern" --
9 I think it should have read "concern."

10 Q Can you tell me where that is exactly, sir, so I
11 know.

12 A Sure. Bear with me, please.

13 Q Yeah, yeah, of course.

14 A That was at the end of paragraph 75.

15 Q 75. And sorry, which line was that? Oh,
16 "control." Yeah. Raise concern. Yes.

17 A And then the other point that I became aware of
18 subsequently, there is a footnote of mine that
19 was about research conducted by a fellow named
20 Salehi. Let me just find that for you. And he
21 had suggested in his research that the US, UK
22 and Australia subjected accountants to
23 suspicious transaction reporting in respect of
24 auditing, and that was what he had said in his
25 research. Just to make sure I went back and

1 checked, and he was wrong. There's limited
2 circumstances in the US where that is the case.

3 This is footnote 14 on page 21, Mr. Pratte.

4 Q Thank you. So just so that I -- footnote 14. So
5 in United States it's not quite so as much as the
6 UK and Australia; is that correct?

7 A Yeah. Well, Australia they have proposed
8 extensive accounting coverage rules, but they
9 are not in place yet.

10 Q Okay.

11 A So that was just in his research.

12 Q Right. Okay. So just so I understand the scope
13 of it, since my friend took you to -- out of
14 Canada, a little trip around the world. UK that
15 is accurate, Australia that's to come and United
16 States it's really not accurate so far as you can
17 tell; is that right?

18 A That's right. In a limited fashion and not
19 enough to say -- not enough to make that blanket
20 statement.

21 Q Okay. Thank you. And is that it?

22 A Those are my corrections.

23 Q Can I take you -- just because I'll take you to
24 that a little later. There might be one I think
25 that is probably just a typo at paragraph 10.

1 And might as well, since we are in the correcting
2 business, check that out.

3 A Sure.

4 Q And just give me a moment. I had it. Okay.

5 Yeah.

6 A It's sentence number 3, yeah. Those who do not
7 adhere to the relevant standards and laws.

8 Q That's right.

9 A Rather than "those who do adhere." Yes. I read
10 that last night. Thanks.

11 Q Okay. Just -- now, I didn't make the correction
12 in my own copy. I'm looking where?

13 A It's in paragraph 10.

14 Q You mean line number 3?

15 A Line number 3, yes.

16 Q Yeah. Okay. Thank you. All right. And can you
17 confirm for me, then, that you have included in
18 this report then, this extensive report all that
19 you deemed important and relevant to justify your
20 opinions and conclusions and recommendations?

21 A Yes.

22 Q And would you agree with me that in an expert
23 report such opinions and recommendations should
24 be based on evidence and fact rather than
25 suspicion?

1 A I think recommendations should be based on the
2 best available knowledge.

3 Q Right. And if there is no actual fact or
4 evidence to support a conclusion, an alleged
5 conclusion of fact, then that remains a
6 hypothesis but it is not a factual conclusion.
7 Do you agree with that?

8 A So the recommendation is based on a hypothesis,
9 not a conclusion if there isn't evidence. Sure.

10 Q All right. And can I just -- you went through
11 some extensive recounting, as is completely
12 appropriate of course, of your background. But
13 we've talked also quite a bit about legal norms.
14 Are you a lawyer?

15 A I am not.

16 Q Now, I just want to begin our discussion by
17 making sure I understand the scope of and the
18 basic structure of your report. Your report is
19 entitled "Report on the Accountants Money
20 Laundering and Anti-Money Laundering." But just
21 so that I understand, it's not solely focused on
22 accountants and the role they play in the system
23 but also on other actors, regulators,
24 governments, enforcement agencies; is that right?

25 A Yes.

1 Q Right. So for example -- and you've discussed
2 that with my friend, Mr. Isaac at some length.
3 You talk a lot about the role of FINTRAC and
4 improvements you would like to -- for them to
5 make to their function and the way they discharge
6 their responsibilities; right?

7 A Yeah, insofar as they relate to the regulation
8 of accountants for money laundering purposes.
9 Sure.

10 Q Right. And you also address in some detail in
11 your report the role of -- I don't think you used
12 that word, but it's really the role of the
13 government or the legislator in defining the
14 scope of the federal law. For example, should it
15 only apply to the regulated professions or to the
16 greater number of regulators -- sorry, of
17 accountants, so-called, the extent to which
18 suspected transactions should be -- or triggering
19 activities should be defined, those kinds of
20 things. Those are legislative scope measures;
21 right?

22 A Yeah, when you look at the list of -- the reason
23 that I organized things that way is around those
24 three questions that were put to me; right?
25 Because the second question was, you know, how

1 effective are the current anti-money laundering
2 regulations and regulatory practices. So it
3 does encompass, you know, in my view, then, the
4 law. So the government -- what the law that the
5 government set -- the law and regulations that
6 they set and including FINTRAC, which is enabled
7 by that law, and the self-regulatory practices.

8 So it does -- that second question elicited
9 that broader view, I think.

10 Q Right. I'm just -- I'm really not arguing with
11 you. I just want to understand and focus on the
12 various actors, if I could put it that way. We
13 have the accountants that you defined very
14 broadly; right?

15 A True.

16 Q And we'll talk about that presently. Another
17 actor is FINTRAC, which you address some
18 recommendations and some -- I'll call them
19 criticisms, but you focused part of your
20 attention on them; right?

21 A Yes.

22 Q Okay. A third would be the role of the
23 government or legislator in adopting the norms
24 which you believe are too narrow for the reasons
25 that you explained well to my friend; right? So

1 that's the legislator and government because the
2 government essentially passes the regulations;
3 right?

4 A Right, right.

5 Q The federal government. And then also you've
6 touched on what I'll call the fourth set of
7 actors, who are really the provincial regulators,
8 and you touched on that when you came to your
9 recommendations specifically. Right?

10 A True. Yes.

11 Q Okay. So we're not just talking about individual
12 accountants or firms of accountants; we are
13 talking about three -- at least three other sets
14 of actors in the system?

15 A That's right. The system is [indiscernible].

16 Q Okay. Thank you. So now I want to focus my
17 questions -- most of my questions on really the
18 role of accountants as individuals or as part of
19 firms and what you say about them in terms of
20 their role in money laundering. And I understand
21 -- really I've divided, but I think that is
22 coincides precisely with what you've said today
23 on many occasions. But I saw your report as
24 addressing the role or place of accountants in
25 two respects. One, are they actually involved in

1 the criminal activity, either directly or
2 assisting it. And I'm going to turn to that
3 presently. And the second is are they witnesses
4 to it and could they do more about stopping it,
5 denouncing it, reporting it. That kind of thing.
6 Okay?

7 A Yes.

8 Q You think that's a fair way of actually looking
9 at their place, that is accountants' place, in
10 the money laundering world?

11 A I do.

12 Q Okay. All right. So let's start with the first.
13 And the first being what is the evidence of
14 accountants actually being directly involved in
15 money laundering. And here I mean that they are
16 participating in it directly or assisting it as
17 opposed to being witnesses and reporting or not
18 reporting it; okay? Do we understand each other,
19 sir?

20 A We do.

21 Q All right. Now, we've already agreed that there
22 are many, many more accountants or so-called
23 accountants than there are chartered accountants
24 in this country, as there are in
25 British Columbia; right?

1 referring to a much larger group than that which
2 would be strictly defined by what you call
3 professional accountants or members of CPA;
4 right?

5 A That's right.

6 Q Okay. In fact you have a statement which is the
7 one I took you to at paragraph 10 where you sort
8 of warn the reader that this shouldn't be seen,
9 this report, as impugning the profession of
10 accountants as a whole.

11 A Certainly not.

12 Q Okay. And you also said to my friend that
13 accounting knowledge, which you said repeatedly
14 today, you -- I'll call it a hypothesis, but
15 maybe you say believe. You believe it's required
16 in order to assist in these money laundering
17 operations and the more sophisticated the
18 operation, the more you believe that accounting
19 knowledge is required. But as you said -- as I
20 understood it, you said that you don't need to be
21 an accountant to acquire the relevant accounting
22 knowledge? You don't need to be certainly a
23 professional accountant to have that knowledge;
24 is that right?

25 A That's true.

1 Q Right. In fact people that go to business school
2 as you, I'm sure, will know, have to take a
3 number of accounting courses before they will get
4 an MBA; right?

5 A Agreed.

6 Q Right. Okay. So then when you look at the
7 involvement of accountants in this -- and again
8 I'm in my first perspective, that is their actual
9 involvement, your report is divided into two
10 subsets: the international situations -- that's
11 paragraph 14 to 20 -- and then the Canadian
12 situation at paragraph 21 to 30. Right?

13 A That's right, yeah.

14 Q Okay. So when we look at the international
15 situation, you make statements -- and this may be
16 just because my copy is wrong, but there's a
17 paragraph 6.1 that follows paragraph 13. That is
18 the first paragraph of section 6. So I'll refer
19 to page -- I assume it's intended to be 14, but
20 it's 6.1 in my copy. You see that? It's the
21 first paragraph under section 6.

22 A Yeah, 6.1 is the subheading. Yeah.

23 Q And but there's a paragraph there which, as I see
24 it, is a paragraph 6.1 and you -- there's a
25 statement there where you quote from an article

1 from Sika and Willmott 1998, which reads in
2 part -- that's the second part of that paragraph.

3 A Yes.

4 Q It says:

5 "Whilst some accountants may be
6 unwittingly caught up in money laundering,
7 it is relevant to ask how much of this
8 activity cannot easily take place without
9 the active/passive involvement of
10 accountants."

11 Right? You see that?

12 A That's right. I see it.

13 Q And then at paragraph 14 you say -- in the second
14 line you quote:

15 "As anti-money laundering regulations have
16 increased in many countries, the criminals
17 place increasing reliance on professional
18 money laundering facilitators."

19 You see that?

20 A I do see that.

21 Q And then it says:

22 "The experts reported a significant number
23 of cases involving lawyers, accountants,
24 financial advisors, notaries -- "

25 Et cetera. Do you see that?

1 A Yes.

2 Q And then the Egmont Group at page 3 that you
3 discussed with my friend at paragraph 15
4 apparently referred to the increasing use of
5 accountants and lawyers for money laundering. Do
6 you see that?

7 A Yes.

8 Q So these three statements that I've pointed to
9 you in those three paragraphs essentially allege
10 that accountants are involved directly in money
11 laundering; right?

12 A Yes.

13 Q Now, I -- we've looked at all of these articles
14 and I just want to make sure that -- I've read
15 them, but I haven't seen anything suggesting that
16 Canadian professional accountants are involved or
17 cited as examples of such involvement. Would you
18 agree with that?

19 A In the international studies?

20 Q Yes.

21 A Yeah, nothing -- in no place did it say
22 accountant and qualify it as being a
23 professional accountant that I read.

24 Q So from those articles whatever they say, one
25 could not draw that there contained evidence that

1 Canadian professional accountants are involved in
2 money laundering, in Canada or internationally
3 for that matter?

4 A Because they use the term "accountant" -- they
5 use the term "accountant" and you wouldn't know
6 whether it was a professional accountant or not.

7 Q Right. So you -- so let's just make clear that
8 we agree from which it follows that one could not
9 conclude that those studies have identified that
10 Canadian professional accountants are involved in
11 money laundering?

12 A They haven't specifically said that. I agree.

13 Q Okay. And then there's one article you refer
14 to -- sorry, I forgot that reference. But I'll
15 come -- you mention that would apply also to the
16 Compin article that you reference at
17 paragraphs 17 and 18. I haven't seen any
18 sourcing to any case in Canada involving a CPA or
19 professional accountant.

20 A That's funny -- it's funny the distinction, you
21 know, because it -- like, you use the term
22 "lawyer" and we all recognize that as being a
23 lawyer who's called to the bar. An accountant
24 you just don't have that distinction, I suppose.

25 Q Right. And seeing as we have twice -- at least

1 twice, if not many, so-called accountants -- when
2 I say so-called I don't mean pejoratively.

3 A Okay. Thanks.

4 Q I mean they call themselves accountants but
5 they're not regulated. But it's important for us
6 -- for the regulated profession to make the
7 distinction. And I just want to make certain
8 that I understand the literature you referred us
9 to as not enabling the Commissioner to conclude
10 that that would necessarily refer to professional
11 accountants as we understand that terminology in
12 Canada.

13 A It wouldn't necessarily mean that, I agree.

14 Q Right. Now -- then at paragraph 22 you mention
15 that Canada is designated by the United States
16 department as a major money laundering country.
17 Do you remember that?

18 A I do.

19 Q Yes. And you refer to a number of reports. But
20 do you remember anything in that assessment that
21 refers specifically to CPAs or chartered
22 accountants or professional accountants in Canada
23 as being involved in money laundering?

24 A No specific references to chartered accountants,
25 no.

1 Q Okay. And Canada is not alone in being thought
2 of as being a major money laundering country.
3 All seven members of G7 are in that category,
4 aren't they?

5 A Agreed.

6 Q Yeah. Okay. Let me turn now to the Canadian
7 situation. And you deal with that, I think, at
8 paragraphs -- just make sure I've got the right
9 spot. It starts at 21 and following. And so
10 here what I've done, sir, is I've divided the
11 references you've given the commission and the
12 Commissioner essentially in some of the reports
13 and that you have addressed with my friends and
14 the cases you deal with at paragraph 30; right?

15 So you refer to a number of reports, a
16 couple of articles. I'll deal with those and
17 then I'll deal with the cases just so you know
18 where I'm going that you -- the cases you
19 mentioned at paragraph 30. Is that okay?

20 A Yes.

21 Q All right. And so again we've looked at --
22 sorry, Mr. McGuire?

23 A This morning it had mentioned that we weren't
24 going to be dealing with those other than -- the
25 package I received this morning suggested that

1 those weren't on the list of documents to be put
2 to me today. Has that changed? The cases at
3 paragraph 30.

4 Q Well, you discussed that with my friends. You
5 discussed those cases.

6 A No, I agree.

7 Q I'm going to ask you questions that are not much
8 different than what my friend asked you.

9 A Okay. Fair enough. Okay. Thanks.

10 Q And if -- look, if there's a problem, you don't
11 remember something, whatever, we'll deal with it
12 then; okay?

13 A Okay. I just want to make sure I have them at
14 hand if the questions are specific.

15 Q Yes, of course. Of course. All right. So you
16 refer to reports by Russell at paragraph 23, Cole
17 and Rodych at 23. Also a speech by Mr. Payne at
18 23. 25 I think -- reports from the Criminal
19 Intelligence Service of Canada at 21, 23, 25.
20 FINTRAC analysis. You also refer to Mr. Tupman.

21 Now, again we've looked at all those
22 references and we found none that specifically
23 referenced a CPA or chartered professional
24 accountant being involved in money laundering.
25 Do you agree or disagree?

1 A As far as I remember, none of those documents so
2 specify.

3 Q Thank you. And then you -- before I turn to the
4 cases. At paragraph 28 you refer to -- and you
5 addressed this with my friend -- the
6 vulnerability, the risk assessment being put at
7 medium. Do you remember that?

8 A I do.

9 Q And that's from the Department of Finance. And
10 here let's -- we'll test my technological skills.
11 The document I'd like to show you is an excerpt
12 from that assessment.

13 MR. PRATTE: Ms. Effendi, it's a document at tab 6
14 and particularly page 32, table 3. And,
15 Ms. Effendi or Ms. Krajewska, can you give us
16 the document number for my friends at the
17 commission.

18 MS. KRAJEWSKA: Yes, I can do that. It's
19 Ms. Krajewska speaking. The document number for
20 that is doc 0001522 and it's tab 6 of our
21 compendium. So 1522. And it's page 32 of that
22 document.

23 MR. PRATTE: You should have it in front of you. I
24 guess we'll see it on the screen presently.

25 MS. KRAJEWSKA: Correct. You just need to scroll

1 down to the next page, please. There we go.

2 That is the page. Thank you.

3 MR. PRATTE: All right. I'm wondering if everyone --

4 can you see that, Mr. McGuire, clearly enough?

5 All right. There we go.

6 Q Now, are you familiar with that document?

7 A Yes.

8 Q Okay. We have four gradations of risk for money

9 laundering; right?

10 A Yes.

11 Q Very high, high vulnerability rating, medium

12 vulnerability rating and low vulnerability

13 rating; right?

14 A Yes.

15 Q And would you agree with me that accountants

16 being classed in the medium vulnerability rating

17 are -- there's only one that's lower than that

18 and that's the life insurance sector; right?

19 A On this chart, yes.

20 Q On this chart. Right. And that's the chart you

21 relied on to say that accountants were medium

22 vulnerability; right?

23 A That's right.

24 Q Right. Okay. And if I count when I look at the

25 number of sectors -- like very high

1 vulnerability, corporations, domestic banks,
2 express trusts, and then high vulnerability,
3 brick and mortar casinos so on -- I counted about
4 21 distinct sectors that were higher
5 vulnerability than accountants. Right?

6 A Yeah. I mean, interestingly, you know,
7 accountants would be providing -- it's ironic to
8 me that corporations are shown as being a very
9 high vulnerability rating and, you know,
10 accountants are the ones that principally deal
11 with describing of those corporations, so -- in
12 terms of how this was constructed, I -- yeah.
13 So I agree with you there are a number before
14 accountants are listed.

15 Q Right. But that's the chart you relied on for
16 the purposes of classifying them as medium in
17 your report; right?

18 A Yeah, I reference their rating as medium in the
19 report, yes.

20 Q Right. And you'd agree with me that at least
21 based on that chart, there are many other
22 institutions and groups that are higher
23 vulnerability than accountants.

24 A That's right.

25 Q Okay.

1 A According to the chart.

2 Q Right. And who prepared the chart?

3 A The Department of Finance.

4 Q Right.

5 MS. KRAJEWSKA: Mr. Pratte, before you move on, do
6 you want to mark that document as an exhibit?

7 MR. PRATTE: Yes. If there are no objections, I'd
8 like to mark that as an exhibit. And I don't
9 mind, Mr. Isaac, if -- and maybe the whole thing
10 is already an exhibit, but I mark the excerpt or
11 as you wish.

12 MR. ISAAC: I think it would be helpful to maintain.
13 I know that there was an issue which we --
14 hopefully we don't need to get into in terms of
15 the late identification of some records, but I
16 think just to make sure that we are tracking the
17 documents that the Madam Hearing Registrar has,
18 that we could use the index that they have. So
19 I think that this is -- the copy that the
20 hearing team have is at index 6, document 6 in
21 the tab and --

22 MS. KRAJEWSKA: Yeah, that's fine. Thank you,
23 Mr. Isaac.

24 MR. ISAAC: Thank you very much.

25 MR. PRATTE: Okay. Just so that I understand,

1 though. Does that mean that you're marking it
2 as new exhibit with a different reference, or
3 has it already, I guess is my question, sir.
4 Mr. Isaac.

5 MR. ISAAC: I believe, Mr. Pratte, that that would be
6 a new exhibit. I have no objection to that
7 being marked.

8 THE COMMISSIONER: So exhibit 396.

9 THE REGISTRAR: Exhibit 396.

10 **EXHIBIT 396: Department of Finance Canada -**
11 **Assessment of Inherent Risks of Money Laundering**
12 **and Terrorist Financing in Canada (2015)**

13 MR. PRATTE: Thank you, sir.

14 Q And then before I turn to the cases, sir, it's
15 not part of your examination per se of that
16 section of your report. You had referred in the
17 introduction to the German -- one of the German
18 reports anyway I think at paragraph 2. Do you
19 remember that?

20 A Yes.

21 Q Okay. And again just for completeness, reviewing
22 that report I found no specific reference to CPAs
23 or professional accountants being involved in
24 money laundering. Do you disagree?

25 A I don't recall, actually.

1 Q Okay. All right. Let's turn to your reported
2 cases which you summarize now at paragraph 30 of
3 your report.

4 A Yes.

5 MR. PRATTE: And there -- it might be helpful,
6 Mr. Commissioner, perhaps to put that
7 paragraph up on the screen.

8 THE COMMISSIONER: Very well.

9 MR. PRATTE:

10 Q And there are about, I guess, ten cases or so
11 that you referred to there, Mr. McGuire.

12 A Yes.

13 Q Over about a 20-year period; is that right?

14 A That's right.

15 Q And you yourself have called that at paragraph 30
16 anecdotal evidence; right?

17 A It is.

18 Q Okay. When we looked at that, in taking all of
19 the cases we found only one or two that involved
20 CPAs, or chartered professional accountants. And
21 first one is *R v. Neilson* which is (b) in your
22 list, and the most recent one, 2020.

23 A Yes.

24 Q Okay. You're familiar with that case?

25 A I am.

- 1 Q And do you know what happened to Mr. Neilson in
2 terms of his professional designation?
- 3 A I don't know.
- 4 Q Okay. And then when I look at all of the others,
5 the only other case there was a chartered
6 accountant or a CPA but that was -- became a
7 later designation, is the *Loewen* case at (h), but
8 that's a 1999 case.
- 9 A I might include PacNet in that discussion.
- 10 Q Okay. Let's talk about PacNet, then, at the
11 moment. The -- and that is contained at --
12 sorry. You don't refer to PacNet in there?
- 13 A I do, (c).
- 14 Q Yeah, (c). So I thought maybe we misread this,
15 but I thought at the moment that -- first of all
16 that the firm was not specifically identified; is
17 that correct?
- 18 A That's correct. It was called -- they referred
19 to it as -- the public accounting firm as being
20 ABC Accounting Limited or something similar.
- 21 Q And the -- at that point what we're -- this is
22 about, at least based on the reports you've
23 cited, is effectively an inter-preservation order
24 being issued to freeze funds that were being held
25 by that accounting firm; right?

1 A Right. About a sanctioned entity.

2 Q Sorry?

3 A The accounting firm was holding -- the
4 accounting firm was holding funds of PacNet,
5 which was a sanctioned entity at the time. So
6 it was --

7 Q Right. But there are no proceedings that I could
8 see reading this case against the accounting firm
9 as having in any way been involved or being
10 charged with money laundering at this stage.

11 A That's problematic, isn't it?

12 Q Pardon me?

13 A It's problematic, I would say. Yes.

14 Q Well, but one cannot draw from this case that the
15 accounting firm was a defendant in a money
16 laundering criminal proceeding.

17 A No. But they processed funds for a sanctioned
18 firm which on the face of it would seem to be a
19 criminal act.

20 Q Well, but they haven't been charged for that,
21 sir, have they?

22 A You know, I think that is the point of the
23 Russell article that I include, which is that,
24 you know, there is a scarce number of chartered
25 and even scarcer number of convictions in Canada

1 for money laundering. And the articles -- you
2 know, German reports which are referenced also
3 talk to the limited resources of enforcement
4 functions in that province at all. So I don't
5 draw any conclusions by the absence of charges
6 or convictions.

7 Q But we certainly can't draw the conclusion that
8 they are guilty, can we?

9 A No. It would be improper for me to decide that
10 they're guilty, but the facts that were
11 described -- you know, the entity not having a
12 vessel to accept the money on its own used its
13 accounting firm and trusted it. The anecdote --
14 or the point of this case I think that was
15 useful to me was to understand that accounting
16 firms were -- or at least one accounting firm
17 was holding funds on behalf of their client,
18 which is to say that it occurs.

19 Q I suggest to you, sir, that in the ten or so
20 cases that you referred to, we have one case of a
21 CPA since the new law became into effect in
22 around 2000 being involved in money laundering.
23 Do you agree or disagree?

24 A There's one -- so one case where the accountant
25 was explicitly cited -- charged, I suppose,

1 being involved in money laundering. Sure.

2 Q Yes. And since we agreed at the beginning that
3 the exercise here should be one that is based not
4 so much on hypothesis but fact, before you can
5 conclude that accountants -- and here I'm
6 specifically referring to professional
7 accountants or CPAs -- are involved in money
8 laundering, I suggest to you that one case is
9 certainly not a trend of increasing involvement
10 by professional accountants and money laundering.
11 Do you agree or disagree?

12 A You know, I did mention that I believe it's --
13 that these cases are anecdotal. There's too --
14 it's too small a subset. The research is
15 examining too small a subset to be able to
16 extrapolate those results. You have to make a
17 conclusion together with all of the other
18 information including, for example, the
19 disciplinary cases of the institutes themselves.

20 Q Okay. Well, I'll get to the disciplinary cases,
21 but we've looked now at the reports and articles
22 you've cited internationally and domestically and
23 the cases. And since the new legislation came
24 into force in 2020 we have one conviction of a
25 CPA; correct?

1 A One conviction, yes.

2 Q Yes. And I suggest to you, then, that one
3 certainly cannot conclude based on the actual
4 evidence that there is an increased trend of
5 professional accountants being involved in money
6 laundering. Do you agree or disagree?

7 A I think I'll agree that insofar as convictions
8 give us information about accountant involvement
9 in money laundering that that evidence is
10 limited.

11 Q Well, it's not only limited. It's one case out
12 of 220,000 or so?

13 A Yeah, I agree with that.

14 Q And so certainly you can't conclude that there's
15 a systemic problem among professional accountants
16 in the way they get involved. And here I mean
17 the involvement of actually participating in the
18 criminal activity. We'll get to the second
19 aspect. There is no evidence that suggests that
20 professional accountants, accredited accountants,
21 are systemically involved in money laundering in
22 this country.

23 A Again, I agree because of your distinction of
24 professional accountants there.

25 Q Thank you. Now, you referred to discipline cases

1 and you discussed this with my friend, your
2 footnote 18. In term of Ontario, at footnote 17
3 you refer to the law society's website. But if
4 one clicks on that all one gets is hundreds of
5 discipline proceedings involving all the rules of
6 professional conduct. There's nothing in there
7 that indicates particular violations of the rules
8 of professional conduct in respect of money
9 laundering. Is that right?

10 A So these -- in footnote 17 I give the link to my
11 source; right? So for each of BC and Ontario
12 you would click the link, and at the link there
13 are various subpages that lay out the publicized
14 discipline cases of each of those provinces.
15 You can't -- there was no effective -- or
16 there's no segregation of those cases for money
17 laundering specifically on either of those
18 sites.

19 Q Right. So there's nothing, at least for
20 Ontario -- CPABC is representing and will deal
21 with this situation I assume. But I couldn't
22 find any assistance in your reference to suggest
23 that CPAs in Ontario were systematically involved
24 in money laundering and breaches of their rules
25 of professional conduct. You agree or disagree?

1 A Disagree.

2 Q You disagree with me?

3 A Yes. Yeah, absolutely. So there's -- the point
4 is that I read the cases over a three-year
5 period and summarized those cases based on their
6 nature. And the point is that -- I guess the
7 point I was making with Mr. Isaac which is that
8 the cases explain -- in many of the cases they
9 explain that an offence took place, so something
10 akin to a fraud or a theft or fraudulent
11 financial statements, that there was a gain or
12 proceeds and that the accountant dealt with
13 those proceeds. The failing in those cases was
14 the - was in many cases the lack of recognition
15 of the money laundering aspect of the
16 activities. So activities were there that
17 constitute money laundering based on the
18 description of the cases themselves, but they
19 weren't labelled at money laundering cases
20 per se.

21 Q Well, how do I find that? You cited ten legal
22 cases that you say directly involved accountants
23 in money laundering and then you referred me in a
24 footnote to an undetermined list with no cases
25 specifically involved. How do I know that your

1 interpretation is correct?

2 A That's a summary of my -- so if you went through
3 the disciplinary cases for those three years in
4 BC, for instance, so look at footnote 18, it
5 describes the categorization of each of the
6 cases that I reviewed.

7 Q When I read paragraph 61 of your report --
8 perhaps we can put that up for the
9 Commissioner -- you say:

10 "We reviewed the professional discipline
11 case decisions of Chartered Professional
12 Accountants of British Columbia and
13 Chartered Professional Accountants of
14 Ontario published on their websites for
15 the years 2017 to 2020 inclusive and found
16 none related to compliance with Canadian
17 anti-money laundering or counter-terrorist
18 financing or sanctions legislation."

19 Then you only refer to paragraph -- to
20 footnote 18. I actually don't see a reference
21 to -- well, at 17. How am I supposed to draw
22 from that that actually you drew the opposite
23 conclusion from reading these cases that are not
24 specified, i.e., that there are a number of
25 professional accountants involved in money

1 laundrying?

2 A I'm not sure I understand your question. The
3 first point was having reviewed them for the
4 period specified -- and they're all available on
5 that website -- that none of them appeared to
6 relate specifically to AML or counterterrorist
7 financing legislation. So they didn't refer,
8 Mr. Pratte, to compliance-related matters for
9 anti-money laundrying.

10 Q But now you're saying you reviewed them and you
11 don't specify any one of the hundreds of cases
12 that I would see if I looked at paragraph 17 and
13 telling me which ones you say, though they're not
14 identified as money laundrying, they involve
15 offences or breaches of professional conduct.

16 A That was the intention of footnote 18, which
17 explained the offences that were related to
18 those cases in those periods.

19 Q Yeah, but that footnote 18 explicitly refers to
20 only British Columbia.

21 A Perhaps the Ontario results aren't in that
22 paragraph or were consolidated. I'd have to
23 look back. I am sorry.

24 Q In terms of professional accountants in
25 particular, and maybe we'll come back to that

1 presently, but do they not have obligations under
2 their respective professional obligations to
3 report possible breaches of the law up the chain
4 and maybe even quit an assurance engagement, for
5 example, or even report it to the authorities?

6 A Yeah. I think you're referring to rule -- yeah,
7 there are professional standards that cover
8 reporting. Yes.

9 Q Right. And you also referred to at some point
10 the fact that accountants can be used to assist
11 money laundering by people who would like, for
12 example, to divert or try to avoid paying taxes
13 because that's one of the challenges in money
14 laundering because you have to declare income and
15 you have to do it in a way that won't kind of
16 give the game away. But don't accountants or
17 anyone who advises under the *Income Tax Act* also
18 have obligations if they suspect that their
19 services are being used for criminal purposes?

20 A I'm not that familiar with the *Income Tax Act*.
21 The scope of my point is that -- or the
22 reference to these points is all about the
23 consolidation of intelligence, a single
24 financial intelligence unit. You know, the
25 clauses when you look at those rules where -- in

1 particular with an insurance engagement where it
2 talks about where you're reporting it, it's
3 reporting to the relevant authorities or -- and,
4 you know, through the governance structure.
5 And, you know, so does that mean FINTRAC. I'm
6 not sure. And I think the clarity would be
7 useful in that instance so that, you know, the
8 financial intelligence unit would have the
9 benefit of that intelligence to fulfill its
10 mandate.

11 Q All right. At paragraph 77 of your report you
12 say, this is on your conclusions on the first
13 question, you say, and I quote:

14 "The role of accountants in money
15 laundering internationally has been
16 escalating since the adoption of
17 anti-money laundering standards."

18 Then the first sentence of paragraph 78:

19 "The extent of accountant involvement in
20 money laundering changes based on the
21 sophistication of the organization for
22 which they're laundering funds and the
23 degree to which the organization's
24 activities are illegal. "

25 Would you agree with me, Mr. McGuire, that

1 alleging in a report like that that accountants,
2 at least in Canada, are involved in money
3 laundering is a very serious allegation?

4 A Yes.

5 Q And that before it's made -- I mean, I understand
6 making it as a hypothesis, but that before making
7 the allegation as if it had been proven as a
8 fact, you need more than anecdote?

9 A So this -- I want to point out that that first
10 sentence is a summary of the research of
11 Frédéric Compin, who I reference earlier.

12 Q Well --

13 A That talks to -- so that it says that based on
14 sophistication of the organization and the
15 degree to which they're active, that just --
16 that's a summary of the vertical and horizontal
17 approaches --

18 Q But --

19 A -- view of money laundering.

20 Q Sorry, I didn't mean to interrupt you,
21 Mr. McGuire. Finish your sentence. I didn't
22 mean to ...

23 A No, that's fine. Go ahead.

24 Q Okay. Well, this is under a section -- it may be
25 drawn from that, but this is under a section

1 entitled "Conclusions." And there you have --
2 you set out the three questions you had set out
3 at the outset of your report, and I read those,
4 given you put your signature to the end of this
5 report, as being your conclusions. Is that right
6 or wrong?

7 A I see it was -- I mean, I had written it as
8 being a summary of my report. I suppose I've
9 used my conclusions as being recommendations,
10 but I see what you mean. I don't think that
11 that sentence says the extent of accountant
12 money laundering involvement -- in money
13 laundering in Canada changes based on
14 sophistication, but I would even agree if it
15 were that limited. The point is that the ways
16 that accountants launder money must -- and
17 adopting the broad definition of "accountant"
18 must change based on the sophistication of the
19 organization and must change based on the degree
20 to which the organizations or activities are
21 illegal.

22 Q Okay. I can understand the hypothesis that
23 you're making, Mr. McGuire, and I can understand
24 why it may be there's frustration that there's no
25 more evidence, but I'm just trying to make a very

1 narrow point that you may have this hypothesis
2 that it's increased in the last 20 years since
3 the anti-money laundering legislation has been
4 adopted, but the fact is that there is no factual
5 evidence to support that conclusion or that
6 hypothesis.

7 A I think I understand your point a little better
8 now. So based on the international research --
9 based on the international research, based on
10 the RCMP's reports, based on the FATF reports,
11 based on, you know, some of the academic studies
12 there's -- it's become clear that anti-money
13 laundering rules have made it more necessary to
14 have professional knowledge to navigate through.

15 So when you say, you know, that the role of
16 accountants has been escalating, and you infer
17 over the last 20 years since it's been
18 implemented in Canada, I suppose what I'm saying
19 is that the role of accountants is based on the
20 international research escalating over time.
21 And I agree with you, despite the lack of --
22 there is a lack of convictions in Canada to help
23 support that that's happening domestically.

24 It's easy to infer that based on, for
25 example, the level of reporting in the UK that

1 they're experiencing that, you know, it's not
2 that it's not happening here. It's that it's
3 more likely -- and I say more likely, not
4 definitive -- that it's happening in the same
5 manner as it is in those other countries and not
6 being reported as often.

7 Q But it's still a hypothesis which has not been
8 proven by actual convictions.

9 A Specifically in Canada, I agree with you.

10 Q Okay. And there was a witness, I'm sure you
11 followed this, Dr. Katie Benson, that I
12 understand testified before this commission
13 earlier. Did you follow her testimony?

14 A I was excluded. I knew I was going to be a
15 witness at that point.

16 Q Well, maybe I could put up before you
17 exhibit 219.

18 MR. PRATTE: And if you go to -- now, maybe you can
19 help me because I need the page number.

20 Ms. Krajewska, do you know the page number we
21 want to refer to?

22 MR. ISAAC: Mr. Pratte not to jump in, but I might be
23 able to provide the index document so that we
24 can ease the reconciliation at the end. It's
25 the same document as is at tab 9 of the -- of

1 Madam Hearing Registrar's index. That won't
2 assist with the page number.

3 MR. PRATTE: Yeah, okay. Thank you. I can probably
4 do that, if you give me a moment.

5 MS. KRAJEWSKA: Thank you, Mr. Isaac. Yes, that's
6 correct. And if you just scroll down, we put in
7 the introduction but it should be side barred.

8 MR. PRATTE: It's page 115, I think.

9 Q And -- well, it's not side barred, I think. But
10 if you look at -- you see five lines from the top
11 of the page it starts "the involvement of
12 professionals." Can you read that properly,
13 Mr. McGuire?

14 A Where it begins "the involvement of
15 professionals"?

16 Q Yes, can you see that?

17 A Yes. She writes:

18 "The involvement of professionals in money
19 laundering, therefore, clearly remains an
20 under-researched and poorly understood
21 area."

22 Q Right. And let's keep going. It says:

23 "As a result of the construction of
24 professional facilitation of money
25 laundering in official discourse and much

1 of the academic literature, which sees
2 professionals as playing a critical and
3 increasing role in the laundering of
4 criminal proceeds, has weak empirical
5 foundations."

6 You see that?

7 A Yes, I categorically disagree with her
8 conclusion. Just even, you know, last month the
9 UK released its national threat assessment
10 looking at the accounting services sector. They
11 now have, you know, nearly a hundred thousand
12 suspicious transaction reports to base their
13 empirical evidence on and, you know, many
14 cases -- many convicted cases about which to
15 base that information. I don't understand how
16 she comes to that conclusion.

17 I did the work of other academics in her
18 country, cite specifically Michael Levy whose
19 materials form part of this -- part of the
20 exhibits. I understand also, you know, his
21 research has been extensive into the actual law
22 enforcement records that show accountant
23 involvement. I don't have much sympathy for her
24 perspective.

25 Q All right. I want to make sure, though, that we

1 understand each other between -- in terms of
2 accountant involvement here. Remember, we
3 started with the distinction between involvement
4 in the sense of actually being involved in a
5 criminal activity and conducting it oneself or
6 assisting it knowingly, and then there's
7 involvement in the second aspect we're presently
8 going to discuss, i.e., not disclosing suspicious
9 transactions and so forth and so on.

10 A In the UK statistics last year of the roughly
11 5,000 STRs that were filed, it was identified
12 that 25 percent were related to the activity of
13 accountants themselves who were suspected of
14 being complicit.

15 Q Okay. But we don't have any such evidence in
16 Canada, do we?

17 A No, because we have no suspicious transaction
18 reporting -- virtually no suspicious transaction
19 reporting and virtually no enforcement of the
20 money laundering laws.

21 Q So all we can conclude is there's no evidence
22 that there is, but we certainly can't conclude
23 from the lack of evidence that they must be?

24 A I understand your position.

25 Q No, but I'm asking you more than that. My

1 position is completely irrelevant. You do not
2 agree with me that if there's no evidence -- we
3 may not be able to conclude that there's no
4 involvement but we certainly cannot conclude that
5 there is involvement if there is no evidence?

6 A You know, I'll meet you as far as there are many
7 indications that taken together to meet point in
8 a direction. Is it definitive? No.

9 Q Okay. Let's turn, then, to the role of CPAs and
10 what I'll call money laundering prevention.
11 That's the second aspect, if I can call it that,
12 of CPA involvement. What do they witness? What
13 position are they in to assist in prevention of
14 money laundering. Do you understand the second
15 point of view I want to talk to you about now?

16 A I do, yes.

17 Q Okay. And I want to focus on what I
18 understand -- how should I put it -- the brunt or
19 the main recommendations that you make to improve
20 this --

21 THE COMMISSIONER: I am sorry to interrupt,
22 Mr. Pratte. Do you want that exhibit still up,
23 or do you want it taken down?

24 MR. PRATTE: No, no, it can be taken down. Thank
25 you, Mr. Commissioner.

1 THE COMMISSIONER: Thank you.

2 MR. PRATTE:

3 Q So I just want to talk to you now about the
4 second aspect of your report in terms of the
5 failures or flaws in the system and some of the
6 recommendations you make.

7 A Sure.

8 Q And as I understand it, and you say that at some
9 point that really your main criticism is about
10 the design particularly at the federal level of
11 the system; right? It's not to criticize the
12 self-regulated professions or accountants
13 individually; it's really that you think
14 fundamentally the system as designed or
15 legislated is deficient?

16 A Absolutely. Yes.

17 Q And that goes to the point that you think the
18 accountant being at the moment limited and under
19 the federal regime to effectively professional
20 accountants is just too narrow; right?

21 A Yes. Yes, sir.

22 Q And that the scope of triggering activity, again,
23 is too narrow?

24 A Agreed.

25 Q Right. And then you also say that there should

1 be increased cooperation between FINTRAC and the
2 regulated professions to make the system work
3 better; right? There should be --

4 A A good exchange of intelligence at a macro and a
5 micro level. Sure.

6 Q Okay. And you also talked about a lack of
7 awareness. I'll come back to that. But the --
8 your major criticisms about the scope of the
9 definition of "accountant" and the too narrow
10 scope of the activities that are covered, that's
11 really a legislative decision of the federal
12 parliament; right?

13 A Yes.

14 Q It's not for the CPAC to decide and implement
15 that system?

16 A No, no.

17 Q Okay. You agree with me; right?

18 A I do.

19 MR. PRATTE: Okay. Could we now turn briefly -- and,
20 Mr. Commissioner, I don't know if you intended
21 to take another break. I think I'm about
22 52 minutes into my allotted time. I'm confident
23 that I'll finish within the time but I'm
24 obviously in your hands as to how you wish to
25 proceed.

1 THE COMMISSIONER: Sure. Is this a time that is
2 appropriate to break as far as you're concerned,
3 Mr. Pratte?

4 MR. PRATTE: Yes, it is sir.

5 THE COMMISSIONER: All right. We'll take
6 ten minutes. Thank you.

7 MR. PRATTE: Thank you.

8 THE REGISTRAR: The hearing is adjourned for a
9 ten-minute recess until 1:02 p.m. please mute
10 your mic and turn off your video. Thank you.

11 **(WITNESS STOOD DOWN)**

12 **(PROCEEDINGS ADJOURNED AT 12:53 P.M.)**

13 **(PROCEEDINGS RECONVENED AT 1:02 P.M.)**

14 THE REGISTRAR: Thank you for waiting. The hearing
15 is now resumed. Mr. Commissioner.

16 THE COMMISSIONER: Thank you, Madam Registrar.

17 **MATTHEW McGUIRE, a**
18 **witness for the**
19 **commission, recalled.**

20 THE COMMISSIONER: Yes, Mr. Pratte. Yes, Mr. Pratte.

21 MR. PRATTE: Apologies, Mr. Commissioner. There are
22 advantages to in-person hearings.

23 THE COMMISSIONER: Yes, there are.

24 **EXAMINATION BY MR. PRATTE (CONTINUING):**

25 Q Thank you, Mr. McGuire. Could I just take you

1 quickly to page 20 of your report. That's the
2 chart that you went through with my friend where
3 you compared some FATF recommendations and the
4 state of the Canadian legislation.

5 A Sure.

6 Q And you had a long discussion with my friend
7 about the definition of "accounting services" and
8 the confusion, as I understood it, that you think
9 follows from the fact that the federal
10 legislation doesn't specifically define what
11 providing an accountant's service is or a public
12 accountant and provincial systems and a narrow
13 definition of "accountant." But as I review the
14 2016 FATF Mutual Evaluation Report, I didn't see
15 any criticism about how Canada defines
16 "accountant." Did I miss something?

17 A Fair question. I don't recall.

18 Q Okay. And just so that I understand your
19 position correctly just because in my mind anyway
20 it's a bit of a red herring. Once you got -- if
21 the federal parliament or the government under
22 the regulations expanded the definition of
23 "accountant" to include more than simply the
24 regulated profession and if it defined more
25 broadly what it describes as a triggering

1 activity, then those accountants involved in
2 those activities would have to report or
3 otherwise be subject to penalties and so forth
4 regardless of what the provincial regimes would
5 dictate; right?

6 A Yes. And just to go back to your prior
7 question, the FATF's -- the position was that
8 the circumstances in which accountants have to
9 report suspicious transactions under the
10 legislation are too limited, which likely --
11 which it can be part of the triggering activity
12 problem and the definition of "accounting"
13 problem.

14 Q Well, it didn't specifically criticize Canada for
15 its definition of "accounting."

16 A It didn't specifically call it out. I agree.

17 Q Okay.

18 A It is a deviation between what they say should
19 be covered and what is actually covered, but
20 they didn't call it out, no. I think you're
21 right.

22 Q Well, okay. You're taking me to somewhere I
23 didn't really want to go, but if you look at
24 page 20 in the first row and the second column,
25 "FATF Recommendation." You see that?

1 A Yes.

2 Q And that's where you have your list (a) to (p) of
3 activities that you counted?

4 A Yes. Right.

5 Q I didn't see that actually in the
6 recommendations; I saw that in the guidance
7 document from FATF.

8 A The companion document. Yes.

9 Q Right. And that's the guidance and that
10 describes -- and I can take you there, if you
11 insist. It describes actually the list of
12 accounting activities that can be counted as
13 accounting activities, but it doesn't say every
14 country has to adopt that list. Is that not
15 fair?

16 A So they say two things. They say that all of --
17 the country should consider subjecting all of
18 them to suspicious transaction reporting and all
19 of them where there are triggering activities to
20 the obligations -- to the relevant AML
21 obligations.

22 Q Well, let's look at it for a minute, then,
23 because we're not on the same page, no pun
24 intended.

25 MR. PRATTE: Could you tell us, Ms. Krajewska, what

1 would correspond to FATF guidance to the
2 accounting profession, paragraph 20, which is
3 our tab 13, page 23.

4 MS. KRAJEWSKA: It's -- so the guidance from the FATF
5 is tab 13 of the compendium.

6 MR. PRATTE: Ours or the commission's?

7 MS. KRAJEWSKA: Ours, which the commission has and
8 has been using. So it's tab 13.

9 MR. ISAAC: Nicholas Isaac here, Mr. Pratte. To
10 assist both of you, that would be tab -- and the
11 Hearing Officer. I believe that would be tab 12
12 of the hearing index as well.

13 MR. PRATTE: Okay. Thank you.

14 MS. KRAJEWSKA: That's the guidance. And the
15 recommendations are the tab before that.

16 MR. PRATTE:

17 Q Okay. And then if we go to paragraph 20 of the
18 guidance, if you could just -- yeah. All right.
19 And you see there, if we read this, sir, it says:

20 "Professional accountants in public
21 practice may provide a wide range of
22 services to a diverse range of clients.
23 The actual services delivered by
24 accountants may vary between jurisdictions
25 and the examples provided here may not be

1 applicable in every jurisdiction.

2 Services may include but not are limited
3 to the following, though not necessarily
4 to the same client."

5 You see that?

6 A We read that differently, though. You're saying
7 that the actual services delivered by
8 accountants may vary and they might -- so in
9 other words in some jurisdictions these services
10 might not be relevant to accountants, in others
11 they may be. We can agree there.

12 Q You read that as a recommendation that that's
13 what it should be defined as --

14 A The last line says the FATF recommendations
15 apply to specified activities in R.22, and those
16 fall from the types of activities that could be
17 conducted by accountants which are enumerated
18 there.

19 Q Well, let's look at R.22.

20 A I have it up here.

21 MR. PRATTE: And I don't know, though, for the
22 purposes of the commission -- I'm not sure who
23 is scrolling up and down.

24 THE REGISTRAR: Sorry, Mr. Pratte. Do you want me to
25 flip to tab 22?

1 MR. PRATTE: Yes, if you can. Well, it's
2 recommendation 22.

3 Ms. Krajewska, can you ask [sic] us what
4 that would mean for the commission. This is our
5 tab. So it's tab 22. It reads specifically --

6 MS. KRAJEWSKA: It's not tab 22. It's the earlier
7 tab. It's tab -- I think it's -- I believe it's
8 tab 11. Sorry, tab 12. Tab 12 has the
9 recommendation 22 in it. Oh, sorry, that's the
10 definition of "accountants." I'm sorry.

11 MR. PRATTE: Sorry, Mr. Commissioner. It would be
12 16. What we are looking for is the
13 recommendation 22.

14 MS. KRAJEWSKA: It should be ... It's tab 16. Sorry
15 about the delay. It's tab 16 with
16 recommendation 22.

17 MR. ISAAC: And just as opposed to interrupting
18 later, just for the Madam Hearing Registrar, I
19 think the corresponding in our index is tab 10.

20 MR. PRATTE: All right. Sorry, Mr. Commissioner.

21 Q If we then look to 22(d).

22 A Yes.

23 Q We have that which is pertinent to professionals,
24 or so-called DNFDPs, including accountants;
25 right?

1 A Yes.

2 Q And that list is buying/selling real estate,
3 managing client money, management bank. It's
4 quite similar to the triggering activities in
5 Canada. That is where accountants directly
6 interact with the financial system. Do you
7 agree?

8 A Yeah. So in respect of your previous question,
9 right, so the first part of (d) says lawyers,
10 notaries, other independent legal professionals
11 and accountants. And so there's -- and
12 accountants there isn't defined, but, you know,
13 the idea that if the guidance enumerates -- in
14 my view, if the FATF guidance enumerates
15 services provided by accountants, then those are
16 accounting services and they're performed by
17 accountants. Then the -- 22(d) encompasses all
18 the services that are listed in the guidance, in
19 my view. And -- but only the certain
20 transactions, the customer ID transactions,
21 apply to these particular functions and it's
22 encouraged later that the country should
23 consider applying suspicious transaction
24 reporting to the full range of accounting
25 services which I believe are the full range of

1 accounting services enumerated.

2 Q Well, I don't really want to argue semantics with
3 you. Perhaps we can leave it that way. We're
4 looking at FATF recommendation 22; right?

5 A Yes.

6 Q Okay. And when I look at your comment -- or
7 sorry your column in the first row, "FATF
8 Recommendation," you see that?

9 A Yes.

10 Q I will not find a corresponding FATF
11 recommendation with those categories (a) to (p)
12 per se?

13 A No, it's not directly in the recommendation;
14 it's incorporated by reference.

15 Q All right. And then briefly let's talk about --
16 and you've discussed that with my friend, the
17 insolvency. We see that in fact in the third
18 column you say:

19 "Definition varies by province.

20 Insolvency

21 is specifically exempted by FINTRAC
22 guidance."

23 You see that?

24 A Yes.

25 Q And in fact you know that there is a regulation

1 coming later this year that will make that
2 explicit. It won't depend simply on the guidance
3 from FINTRAC; right?

4 A I am aware.

5 Q Sorry?

6 A I am aware.

7 Q You're aware of that. And so for good or for
8 ill, the Government of Canada has considered that
9 insolvency should be exempted. And I suggest to
10 you that that was in part because there are court
11 supervision mechanisms to protect the system.
12 You may be dissatisfied with that but that is
13 what the legislators decided; right?

14 A I agree that I'm dissatisfied with that.

15 Q Well, would you -- let's split the apple in half
16 or the pear in half. Would you also agree that
17 that is what the legislator has decided?

18 A I agree that the legislator has decided that --
19 to remove them, yes.

20 Q And then in respect of auditing, at page 21 you
21 say also that audits should be included.

22 A Yes.

23 Q And, but again, the Parliament of Canada at least
24 its delegate, the Government of Canada by way of
25 regulation, has maintained that auditing services

1 should be exempted from the regime; correct?

2 A If for some reason -- not in align with the FATF
3 standards.

4 Q Well, the FATF standards, as you suggest, I think
5 at paragraph 23 strongly recommends that it be
6 included but does not require it. Is that not
7 correct?

8 A Yes, it strongly recommends it.

9 Q It does not require it?

10 A All recommendations are recommendations.

11 Q Well, it's a recommendation. It's not a
12 requirement, and certainly there's no finding in
13 the 2016 report that Canada is not complying with
14 its obligations because it has accepted auditing.
15 Is that not correct?

16 A The FATF did not cite Canada on -- in that
17 respect, although they did say, as I pointed out
18 earlier and as mentioned in one of my
19 appendices, that they believe that the extent of
20 suspicious transaction reporting isn't
21 expanded -- let me get the specific quotes.

22 Q That it one you correct that it was of concern.
23 Is that not the --

24 A No. That's -- I mean to say in -- sorry,
25 Mr. Pratte. One moment, please.

1 Q Of course.

2 A I'm sorry, I can't find it right now.

3 Nevertheless, the point was that there's -- the
4 suspicious transaction reporting requirements
5 apply to too narrow a field, which is beyond --
6 there are two standards; right? There's the
7 first standard which applies to ID'ing clients
8 and the full spectrum of the AML requirements,
9 and then AML requirements -- and then just
10 suspicious transaction reporting.

11 Q Okay. Well, whenever you find it later on, even
12 if I'm done, it will be helpful to all of us.

13 A Thank you.

14 Q Through counsel or however. But just to finish
15 on the auditing standard. So I appreciate that
16 you disagree with the policymakers in Ottawa, but
17 would you at least agree with me that certainly
18 the auditing function of regulated public
19 accountants is highly regulated, then? You
20 mention at paragraph 71 a standard 250, for
21 example, which prescribes some of the obligations
22 that befall professional accountants or chartered
23 accountants?

24 A Yeah. I think, you know, in the discussion with
25 Mr. Isaac, you know, what I was pointing out is

1 that I believe that there's great oversight for
2 fitness. You know, and that -- and for audit
3 that's more so the case. What I'm suggesting
4 only is that based on the strong recommendation
5 of the FATF that auditors be subject to
6 reporting suspicious transaction reports so that
7 those reports can form the basis of the
8 intelligence -- of our financial intelligence
9 unit so they can carry out their functions.

10 Q I appreciate that. But the policy makers have
11 decided that they didn't agree with that view at
12 least thus far; correct? The legislator.

13 A Yeah, and my job wasn't to -- I mean, my mandate
14 wasn't, you know, to say -- my job was to point
15 out the gaps, the technical deficiencies and the
16 failures and outcomes of the regime, not
17 necessarily to secede to what the government has
18 decided to do. I think if there's anything that
19 comes out of the report, as you summarized
20 earlier, it's that there are significant
21 structural deficiencies and there is a
22 consequence of legislation which doesn't yield
23 the technical outcomes we need and -- or doesn't
24 conform to the technical specifications that are
25 set out nor does it achieve the outcomes that we

1 want.

2 So, you know, I'm glad to agree with that
3 legislation carves out assurance but -- and that
4 the legislator did it, but it is in
5 contravention of the FATF recommendations.

6 Q Well, we'll argue about that later. But that
7 wasn't my view; that's your view. Right? That's
8 your view. I didn't point out there were
9 deficiencies. I was summarizing your view.

10 A This whole report is about my analysis. Sure.

11 Q Okay. All right. Now let's talk to conclude
12 this discussion a bit about, more directly, the
13 efforts of my client, The Chartered Professional
14 Accountants of Canada, CPAC.

15 You refer to the fact that you had been the
16 chair of the committee, the CPA's anti-money
17 laundering committee, from about 2013 to 2016.

18 A Yes.

19 Q And will you agree with me that one of the
20 objectives of that committee was to assist the
21 CPA Canada in contributing on behalf of CPA to
22 the public interest and more efficient fight
23 against money laundering?

24 A Agreed.

25 Q Yeah. And you did your best when you were there

1 for three or four years to achieve that
2 objective?

3 A I did.

4 Q And one of the things you did in that capacity
5 was to issue the guide that you mentioned and you
6 went through in some detail with my friend in
7 2014?

8 A Yes.

9 Q All right. And he asked you a question as to
10 whether or not there had been update, and you
11 said you weren't aware of any. And I think you
12 said that in your report; right?

13 A That's right.

14 Q Have you inquired as to whether or not the guide
15 was being updated?

16 A Yes.

17 Q And what did they say?

18 A They said it was not contemplated at the time.

19 Q And who and when did you ask that question, sir?

20 A It was 2018 and I wrote to the -- it was 2018 or
21 2019, I suppose. And I'd written in to say
22 that -- to point out that the guide was out of
23 date and asked if it was going to be updated and
24 if I could assist.

25 Q Okay. And before, though, you filed your report

1 and revised your report and you wrote that there
2 was no update. Did you follow up a year later to
3 say, well, is anything happening? Did you make
4 any inquiries?

5 A I guess I drew my inferences based on the
6 articles that I've been reading, none of which
7 have referenced an updated guide.

8 Q Okay. Well, I guess we'll hear evidence in
9 two days as to when it might be released if
10 there's an update.

11 Then you note and you've spoken about that
12 at some length about the issues. I think you
13 note that at paragraph 58 about compliance with
14 accountants and some accounting firms that
15 FINTRAC had communicated. Do you remember that
16 discussion you had with Mr. Isaac earlier?

17 A Yes.

18 Q Sorry?

19 A Yes, I do.

20 Q Okay. And that resulted, didn't it, in an alert
21 that was issued by CPA Canada to try to sensitize
22 the profession in 2015 once that information had
23 been obtained; is that correct?

24 A Yeah, I assisted in the authorship of that
25 document.

1 MR. PRATTE: Okay. And Maybe we could put that up,
2 Ms. Krajewska, if we can locate it somewhere.

3 MS. KRAJEWSKA: It's tab 20 of the compendium,
4 Mr. Pratte.

5 MR. ISAAC: Sorry, Mr. Pratte. Perhaps easier to
6 interject before you begin asking your
7 questions. Just for the hearing, that's
8 tab 18 -- I'm sorry. Never mind. I'll provide
9 the correct reference by messaging. I am sorry.
10 I apologize.

11 MR. PRATTE: No, that's okay. Could we mark that as
12 the next exhibit, Mr. Commissioner.

13 THE COMMISSIONER: Very well. I think we are at 397,
14 Madam Registrar.

15 THE REGISTRAR: Yes, exhibit 397.

16 **EXHIBIT 397: CPA Canada, Alert: Proceedings of**
17 **Crime (Money Laundering) and Terrorist Financing**
18 **- Know Your Obligations (July 2015)**

19 MR. PRATTE: Thank you, Mr. Commissioner.

20 Q And after that alert, do you know whether FINTRAC
21 ever contacted CPA Canada to say these compliance
22 problems are maintained; you've got to do more
23 with your members?

24 A No, that was just after that publication or just
25 shortly after that was published the committee

1 was disbanded, so I don't have any knowledge.

2 Q You don't have any knowledge whether -- but you
3 know that FINTRAC is in regular contact with CPA
4 Canada. They haven't stopped talking to them
5 just because you left. Isn't that right?

6 A I wouldn't know that. But, I mean, I believe
7 that Ms. -- Michelle -- I'm sorry, I've
8 forgotten her last name. Michelle is, I
9 believe, on the newly formed committee for --
10 advisory committee to the Department of Finance.

11 Q Okay. But just so I understand your evidence
12 clearly, you have no knowledge or evidence that
13 after that alert was issued under your leadership
14 or support, FINTRAC continued to complain or
15 mention to CPA Canada that there were serious
16 compliance problems and that they needed to
17 address that? You have no knowledge of such a --

18 A I would have no direct knowledge of that. I
19 only base -- my conclusions are based on my
20 experience in dealing with public accounting
21 firms since.

22 Q And you made no inquiries of CPA Canada to say
23 what did you guys do about these compliance
24 issues before you filed the report, did you?

25 A I did not.

1 Q And then you talk about administrative money
2 penalties. You note at paragraph 59 that there
3 have been no reporting entities by the accounting
4 sector or being penalties to the accounting
5 sector. Now, up to 2015 you know -- I'm sure you
6 know -- that other reporting entities did suffer
7 administrative penalties; right?

8 A Yeah, there were penalties issued. The first
9 one I think was December 2009 that was
10 published.

11 Q And -- right. As it had to be. And so there
12 were penalties that were enforced in -- for other
13 sectors, but not accountants. So it's not as if
14 there were no penalties whatsoever; it's that
15 just none that were for the accounting sector.
16 Correct?

17 A That's correct.

18 Q Okay. And you've also mentioned that, though you
19 disagree with that, when you had the meeting with
20 FINTRAC, FINTRAC -- and it's noted in the minutes
21 -- considered that accountants were generally low
22 risk for money laundering; right?

23 A That is what it says in the minutes, yeah. I
24 think that's what they said at the time.

25 Q Right. And you note in your report that there's

1 been -- there have been really -- until very
2 recently there was an interruption where there
3 were no administrative penalties at all for two
4 or three years; right?

5 A Yeah. You know, one of the ways that the FATF
6 determines whether or not monitoring and
7 supervision is sufficient is based on the
8 outcomes of examinations and how dissuasive
9 penalties are to participants in the system.
10 And so I point out that over that period there
11 were no penalties. There was -- there were a
12 number that continued, like Lotto Quebec, for
13 instance, which was recently published which was
14 negotiated, I suppose, throughout that period.
15 And then an MSB recently. But there was a
16 hiatus in publication of penalties because of a
17 case called *Kabul Farms*.

18 So I suppose the real difficulty, if you're
19 saying -- if you're trying to prove to the FATF
20 that your penalties are dissuasive, no matter
21 the reason, if there aren't any, it's hard to
22 suggest that, you know, the reporting entity --
23 that the reporting entity sectors are going to
24 stand up and take notice if there aren't
25 sanctions or consequences or -- to

1 non-compliance.

2 Q Yeah. But, first of all, let's try to deal with
3 these questions one at a time. You've alluded
4 now for the first time to an action that may
5 explain, as I understand it, why there were no
6 penalties for anybody for two or three years, the
7 *Kabul* case; right?

8 A Yeah.

9 Q And that was a case of the Federal Court of
10 Appeal which criticized the process by which
11 penalties were administered. Is that not
12 correct?

13 A Yeah, I think the specific wording -- or the
14 wording in that decision was all about the idea
15 that the calculation was not reasonable in that
16 situation.

17 Q Right. Well, all I'm trying to suggest to you,
18 although it's not mentioned in your report, is
19 that the reason for the interruption in all
20 administrative penalties is not that they were
21 asleep at the switch, but that they were revising
22 their systems to make it compliant with the
23 direction of the Federal Court of Appeal. Is
24 that your understanding?

25 A Yeah, I -- the first part of that of course is

1 that from the time they had the power in 2009 to
2 the time they stopped, let's call it 2015-ish,
3 there were no penalties against accountants, not
4 a single one. And then I appreciate that the
5 hiatus -- FINTRAC's hiatus while they revisited
6 their processes resulted in no administrative
7 monetary penalties for anyone.

8 So that -- you know, that is at the heart of
9 the analysis, though, is that there is no
10 dissuasive nature of penalties regardless of the
11 reason which creates that gap of outcome when we
12 look at -- when we evaluate ourselves against
13 the FATF standards.

14 Q FINTRAC has discretion as to when it applies
15 penalties, does it not?

16 A Discretion. Yes, it does.

17 Q Right. And might it be for it to decide
18 whether -- if it's of the view that the
19 accounting sector is a low risk sector, that it
20 does not need to enforce penalties? You may
21 disagree with that, but could that not be a
22 reasonable explanation for the fact that they
23 have not sought penalties against accounting
24 firms?

25 A There could be any number of reasons FINTRAC

1 could decide not to issue a penalty. We know a
2 view things. We know that accounting firms were
3 non-compliant and we know that there were no
4 public penalties. Why they decided that is up
5 to them.

6 Q You also said --

7 MR. PRATTE: And, Mr. Commissioner, I know I'm going
8 to hit the clock very soon, I think. I hope I
9 can do this in the next five or so minutes, if
10 that's okay.

11 THE COMMISSIONER: Yes, that's fine, Mr. Pratte.

12 MR. PRATTE: Thank you, Mr. Commissioner.

13 Q You mentioned that the lack of awareness and you
14 noted that that was mentioned in that minute that
15 my friend referred you to in terms of the -- I
16 think the minute said that some accountants and
17 some firms had lacked awareness. The minute I'm
18 talking about is of your committee where FINTRAC
19 reported. And you said that based on your
20 experience there was lack of awareness. Now, did
21 you conduct a systematic study of the extent of
22 lack of awareness and particularly in the CPA
23 profession?

24 A So -- well, you know, there was just recently I
25 did a presentation for the CPA academy, which is

1 an institution that provides training across
2 professional accountants in Canada and the US.
3 And it was a presentation on accounting and
4 money laundering and -- accountants and money
5 laundering, similar sort of subject matter to
6 the report.

7 And I was -- I'll tell you I was curious too
8 about how that had evolved over time, and so I
9 did include a few questions in that -- as part
10 of that webinar polling question to ask about
11 level of awareness. And, you know, at the
12 beginning of the presentation there was -- very
13 few people recognized the extent of the
14 situation and by the -- or the obligations
15 themselves, and by the end there was a greater
16 awareness. That's patting myself on the back.

17 I'm glad to share the results of that study
18 with you. Or it's not a study. It's not a very
19 academic approach, but I think it's indicative.
20 I'd be glad to share those webinar results with
21 you.

22 Q Just to answer my question, though, is that you
23 didn't conduct a formal study, did you?

24 A I did not. The comments in my report were based
25 on my experience.

1 Q And you mentioned that people that in your
2 business you talk to often evince a lack of
3 awareness. But when I look at your website
4 that's sort of what you're selling; right? And I
5 don't mean this in a pejorative way, but part of
6 your *raison d'être* as The AML Shop is for those
7 who think need more awareness, they'd come to
8 you; right?

9 A I've got to put my kids through school somehow.
10 Sure.

11 Q Right. But it's a bit of a biased sample; right?
12 I mean, you can't draw an overall conclusion that
13 the entire CPA profession is -- or a majority or
14 even a significant minority is unaware because
15 those who come to see you who may or may not --

16 A Mr. Pratte, I have far more interactions with
17 CPAs than just as an advisor.

18 Q Okay. Let's just conclude in terms of the CPA's
19 efforts. You've told us, then, that you
20 participated in a guide in 2014. And I expect
21 that the Commissioner will hear on Wednesday that
22 there's a revised guide that's been in the works
23 for sometime that will be issued next year.

24 A Right.

25 Q We talked about the alert. You mentioned the

1 webinar that followed also the advice from
2 FINTRAC about their concerns; right?

3 A Yes.

4 Q And you know that there's -- other than the
5 committee you chaired, there is also a committee
6 that the federal government had called the
7 public-private sector advisory committee that
8 FINTRAC was on and the CPA Canada was on?

9 A Yeah, the new iteration of the committee I was
10 part of.

11 Q Okay. And now, this new iteration of the
12 committee is called the -- people refer to it as
13 ACMLTF or something. ACMLTF. It's the advisory
14 committee on money laundering and terrorist
15 financing?

16 A The working committee, yes.

17 Q Okay. And that's on, I think, since 2017; right?

18 A Okay.

19 Q Roughly.

20 A I'm not aware of the date.

21 Q Okay. And you know that CPA Canada sits on that
22 committee?

23 A I am aware of that.

24 Q Yes. And they regularly interact with FINTRAC in
25 that respect?

1 A Yeah, I would guess there's regular
2 interactions. Sure.

3 Q And you know that CPA Canada has organized a
4 number of conferences. For example, in
5 February 2019 they hosted a session between
6 provincial CPA bodies and CPA Canada and had
7 leaders of the profession to deal with money
8 laundering. Were you aware of that?

9 A I wasn't aware of that.

10 Q Okay. And you know -- and I think you've
11 referred to this -- that there are a number of
12 publications emanating from CPA Canada to try and
13 educate the profession and assist in its learning
14 about their responsibilities; right?

15 A Especially as it relates to beneficial
16 ownership. Sure.

17 Q But money laundering more generally?

18 A Yeah, the money laundering articles speak very
19 little to the obligations of accountants or how
20 to identify risk. I've been through the
21 compendium documents and substantially all of
22 them deal with either the beneficial ownership
23 initiative or broadly, you know -- or a very
24 broad coverage of the subject.

25 Q Right. But the new guide, if it updates your old

1 different pieces of legislation speaking
2 to the issue of reporting."

3 It's really troubling for me to read that in
4 concert with the limited number of suspicious
5 transaction reports that are out there because I
6 think it's abundantly clear how that reporting
7 should take place, when it should take place,
8 perhaps not the application to specific
9 individuals, as I point out, and the protections
10 that are provided.

11 So yeah. But I don't understand the
12 whistleblower hotline and how it conflicts or
13 replaces or what its relationship to suspicious
14 transaction reporting is.

15 Q Well, maybe you should stay tuned on
16 Wednesday and we may understand that better. But
17 my point is simply generally speaking,
18 Mr. McGuire, would you not agree that although no
19 system is perfect, more can always be done. CPA
20 Canada has done quite a lot to try to educate its
21 membership and to make progress in this area by
22 cooperating as best it could with legislators and
23 FINTRAC. Would you not agree with that?

24 A I agree that a lot is being done, you know, and
25 it's -- you know, Mr. Pratte, I reiterate how

1 frustrating it is to see -- I mean, I sat in the
2 chair of chair and, you know, despite the number
3 of outreach activities at the time, it didn't
4 seem to move the needle. And so I am the
5 biggest cheerleader for initiatives that would
6 help improve that situation.

7 MR. PRATTE: Thank you very much, Mr. Commissioner,
8 for your indulgence, I apologize for my
9 inefficiency in putting documents. And thank
10 you for -- my friend Mr. Isaac for assisting.

11 Thank you, Mr. McGuire.

12 THE WITNESS: Thank you.

13 THE COMMISSIONER: All right. Thank you, Mr. Pratte.

14 Next we have Mr. Soltan on behalf of the
15 Chartered Professional Accountants of
16 British Columbia, who has been allocated
17 30 minutes.

18 MR. SOLTAN: Yes. Good afternoon, Mr. Commissioner.

19 Can you hear me?

20 THE COMMISSIONER: I can. Thank you.

21 MR. SOLTAN: Good afternoon, Mr. McGuire.

22 THE COMMISSIONER: I'll say, Mr. Soltan, we're
23 getting a bit of a reverberation from you. So
24 I'm not sure if that's -- a bit of feedback or
25 something. At least I am.

1 MR. SOLTAN: My colleague who is in the room with me
2 is muted.

3 THE COMMISSIONER: Thank you.

4 MR. SOLTAN: Maybe that helps a little bit. There we
5 go. Mr. McGuire -- I'm sorry, Mr. Commissioner.
6 We're having a technical issue.

7 Mr. Commissioner, should we stand down for five
8 minutes while we resolve this issue?

9 THE COMMISSIONER: I think that's a good idea,
10 Mr. Soltan. I don't know if our IT coordinator
11 can help or not, but I know that Ms. Matters is
12 on the line. So you can coordinate with her,
13 perhaps. We'll stand down for five minutes.
14 Thank you.

15 MR. SOLTAN: Thank you very much.

16 THE REGISTRAR: The hearing is stood down until
17 1:45 p.m.

18 **(WITNESS STOOD DOWN)**

19 **(PROCEEDINGS ADJOURNED AT 1:41 P.M.)**

20 **(PROCEEDINGS RECONVENED AT 1:45 P.M.)**

21 THE REGISTRAR: The hearing is resumed,
22 Mr. Commissioner.

23 THE COMMISSIONER: Thank you, Madam Registrar.

24 **MATTHEW MCGUIRE, a**
25 **witness for the**

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Commission, recalled.

THE COMMISSIONER: Yes, Mr. Soltan.

MR. SOLTAN: Yes. Thank you very much,
Mr. Commissioner.

EXAMINATION BY MR. SOLTAN:

Q Yes, Mr. McGuire, I would like to ask you a question about paragraph 30 of your report, which was the subject of extensive examination by my friend Mr. Pratte. And I would simply ask you to confirm that you weren't able to find any other cases, criminal cases involving money laundering involving accountants, whether professional or unregulated, in Canada?

A Those are the extent of my findings based on the search of CanLII that is described in that paragraph.

Q Yes. Thank you. My assumption is that you've never been a member of CPABC.

A That's a good assumption. Yes.

Q Thank you. Did you consult with anyone at CPABC about its governing documentation and how it is administered and -- interpreted and administered?

A No, I did it based on a plain reading -- on a plain reading of the information.

1 Q And by governing documentation I'm referring to
2 the *CPA Act* and the bylaws.

3 A That's right.

4 Q As well as the CPA code of professional conduct.

5 A Yes.

6 Q I have a few questions for you about that. And
7 I'll take you to page 38 of your report where you
8 talk about the fact that CPABC and the *CPA Act* of
9 British Columbia does not define "accounting
10 services."

11 MR. SOLTAN: And, Madam Registrar, I'll need to have
12 on the screen appendix A of the overview report,
13 which was exhibit 391, I believe.

14 Q And if I could take you to section 47.

15 Mr. McGuire, you've reviewed that section before?

16 A I think it's copied in paragraph 30.

17 Q And would you agree with me that this section is
18 not intended to define the practice of
19 professional accounting but rather is intended to
20 define what only CPAs can do in British Columbia?

21 A All I can say is what I read. And what I read
22 it is says "the practice of professional
23 accounting comprises one or more of the
24 following services," and then it provides a
25 list.

1 Q You'll see in section (2) that there is a
2 provision that says a person is not allowed to
3 perform these services unless, for example,
4 they're a chartered professional accountant
5 member in good standing?

6 A I agree with that, yes.

7 Q Does that give you some assistance in
8 interpreting this section?

9 A I'm sorry, I am not sure what you're looking
10 for.

11 Q What I'm getting at here is that the only purpose
12 of section 47 is to define those services that
13 can only be performed by CPAs in
14 British Columbia. So, for example, an
15 unregulated accountant would not be permitted to
16 perform these services in British Columbia.

17 A Okay.

18 Q You agree with that?

19 A That's what it says there, yes.

20 Q Yes. Thank you. And if I could just take you to
21 section 3(c) of the CPA Act which is right at the
22 beginning. A little further up.

23 Page 35 of the PDF. There we are. So if I
24 could direct your attention to section 3(c) of
25 the CPA Act. CPA Act is shorthand for the

1 British Columbia *Chartered Professional*
2 *Accountants Act*, for the record.

3 A Okay.

4 Q You'll see that CPABC has as one of its object
5 the regulation of:

6 "All matters, including competency,
7 fitness and professional conduct, relating
8 to the practice of accounting by members,
9 students, professional accounting
10 corporations and registered firms."

11 So would you agree with me that because of the
12 section that CPABC has regulatory authority over
13 all services provided by its members, whether
14 they are in public practice or in industry?

15 A So, Mr. Soltan, the purpose of my analysis
16 was -- as I mentioned when I was speaking with
17 Mr. Pratte, the purpose of my analysis was to
18 try to find a way to move from the *PCMLTFA*
19 definition of providing accounting services to
20 the public down to what that meant in each
21 province in the absence of a definition. And so
22 I'm not that familiar with the CPABC legislation
23 and -- but on a plain reading now, the practise
24 of accounting, I don't think we've gotten to
25 what constitutes "accounting" yet. Is that

1 next?

2 Q I'm going to take you to that. I just wanted to
3 draw your attention to section 3(c), and I'm
4 putting to you that CPABC has regulatory
5 authority over the practise of accounting by
6 members and firms over all aspects of the
7 services they provide as well as members in
8 industry. That's my proposition.

9 A The clause seems all encompassing. Sure.

10 Q Yeah. Thank you.

11 A "All matters" is a very broad term. Sure.

12 Q You also in your analysis in paragraph 39
13 suggested that there might be a difference
14 between under the bylaws "public accounting
15 services," quote/unquote, and "other regulated
16 services," quote/unquote. And you opine that
17 only the former, that is to say public accounting
18 services, are subject to the federal AML regime.

19 A Yeah, what I was -- again, it defined two
20 categories of things. It said --

21 Q Yes.

22 A -- public accounting services and it said other
23 regulated services. So I was just going
24 logically from -- just as -- just based on a
25 plain layperson's reading when you define two

1 things separately that, you know, one doesn't --
2 there's no need to define the second thing if
3 the first thing includes the second thing. It
4 didn't seem like a stop stead, is all I'm trying
5 to say.

6 Q Let me suggest to you the only reason for the
7 difference is for the purposes of licensing.

8 A I don't know. I would just, as I say, was
9 trying to follow the bouncing ball of going from
10 what does the federal legislation say is covered
11 and then trying to find a place that it was
12 referenced in the provincial legislation to try
13 to come to a conclusion about what was covered.
14 And that was -- and that's the analysis I set
15 out. If the analysis is flawed, then I accept
16 that.

17 The point of -- as I say, I was trying to
18 come to a logical conclusion about how it
19 flowed.

20 Q Thank you. I'll take you to paragraph 62 of your
21 report.

22 MR. SOLTAN: And I'll need Madam Registrar to bring
23 up the CPABC code of professional conduct, which
24 I believe is appendix A to the overview report.
25 Pardon me, appendix E. Appendix E. There we

1 are. It's rule 102.1. A little bit higher.

2 Thank you.

3 Q Would you agree with me and I appreciate that the
4 rule says what it says, but would you be prepared
5 to agree with me that if a member is convicted of
6 money laundering for terrorist financing that
7 they have an obligation to promptly notify CPABC?

8 A Yes, and it says so in paragraph 62 of my
9 report.

10 Q Yes. And if I could just take you to
11 footnote 19, which deals with rule 201.1.

12 MR. SOLTAN: A little further down. Pardon me, it's
13 footnote 19 of Mr. McGuire's report. And I'm
14 referring to 201.1.

15 Q I understood your report to suggest that
16 rule 201.1 could be interpreted to only apply to
17 licensing-related legislation. Do you see such a
18 restriction on the face of the rule?

19 A In fact, I think I point out that later the
20 guidance suggests that it's -- so where I
21 looked -- I can't scroll, but you see that once
22 you start reading the guidance -- okay. So on
23 the face of it I don't -- like the FINTRAC
24 legislation does not seem to me to be licensing
25 legislation in any way for a public accountant.

1 That was the first part of my -- that was the
2 first part of my analysis. But if you scroll
3 down further. I ...

4 Q I think it's paragraph 2 of the guidance.

5 A Yeah, there's -- it was in the guidance. I did
6 find in the guidance that it seemed to push
7 towards the idea that you would have to report
8 deficiencies with FINTRAC.

9 MR. SOLTAN: Yes. Paragraph 2, Madam Registrar. A
10 little higher.

11 Q "The registrant should be cognizant of --"

12 A And comply with -- yes. So compliant. I think
13 there was another section that dealt more
14 specifically with the reporting of -- I am
15 sorry, you're questioning, not me. Go ahead.

16 Q Yes. Exactly. I think all I'm trying to suggest
17 it is that rule 201.1 has no restriction on its
18 face dealing with licensing. And when you read
19 paragraph 2 of the guidance it's very broad in
20 its scope, rule 201.1. It has no --

21 A That it's directed -- so paragraph 2 says that
22 you must comply with legislative requirements.

23 Q Yes.

24 A Sure. No question here.

25 Q Okay. Thank you. And I understand your evidence

1 to be that there may be a risk of money
2 laundering or terrorist financing with
3 unregulated accountants. Is that your evidence?

4 A Yeah, the risk recognized by, for instance, the
5 Grant Thornton report on the subject which
6 relates professional accountants -- the
7 accountants as they were defined by the
8 legislation is posing a high risk tangential to
9 that of a real estate practitioner.

10 Q And would you agree that it is entirely up to
11 parliament to decide to amend the federal AML
12 legislation to deal with unregulated accountants
13 and bring them into the regime?

14 A Absolutely.

15 Q Yes.

16 A Yes, sir.

17 Q You spoke briefly about information sharing in
18 your evidence. And are you aware of anything in
19 principle that would prevent FINTRAC from sharing
20 information with CPABC?

21 A Yes. So -- or if it were legislated I can't
22 think of a problem. But as it stands, FINTRAC
23 is required -- cannot disclose specified --
24 designated information in the absence of that
25 authority in the act as far as I understand.

1 Q You think that they can't do it because it's not
2 in the act?

3 A What I'm saying is that as far as I understand
4 the legislation, FINTRAC is allowed to disclose
5 designated information only to specified
6 parties. Sorry. And "designated information"
7 is defined within that legislation.

8 Q So in order for FINTRAC to share information with
9 CPABC the federal legislation would need to be
10 amended?

11 A Well, designated information, which would mean
12 specific case-related information.

13 Q Yes.

14 A Right. Yes, I would agree with that.

15 Q And if I could just take you to footnote 18.
16 This is where you talked about the disciplinary
17 cases of CPABC.

18 A Yes.

19 Q And you made an observation that they didn't
20 appear to deal with money laundering?

21 A Yeah, that's right. I didn't -- on my reading
22 of those three years of disciplinary cases I
23 didn't see one that explicitly called out money
24 laundering.

25 Q Is it fair to say that that was simply stating a

1 fact and it was not intended to be a criticism?

2 A I think it was an observation of -- so an
3 observation. So fact, for sure. The idea
4 behind it was when we think about monitoring and
5 oversight with respect to anti-money laundering,
6 I was looking for indications that there were
7 dissuasive sanctions in line with the outcomes
8 of the FATF recommendations looked for. And,
9 you know, as in the CPABC materials I understand
10 that they say that, you know, FINTRAC is the
11 regulator and therefore I shouldn't have
12 expected to see -- I guess the position would be
13 that I shouldn't have expected to see any money
14 laundering-related disciplinary notices. I
15 suppose if you take that together with the rules
16 we looked at just a moment ago, I would expect
17 that the accounting -- those subject to the
18 CPABC rules would have to report those -- be
19 obligated to report those deficiencies, the even
20 shorter violations by FINTRAC, and I guess I
21 could imagine that there might be a parallel
22 disciplinary process in respect of those
23 failures.

24 Q But I'm -- I just want to deal with the fact that
25 there -- as you observed, there don't appear to

1 be any discipline cases involving money
2 laundering.

3 A In terms of money laundering compliance, not --
4 that I agree with.

5 Q But you don't know why that is, do you?

6 A I don't know why that is. Yes.

7 Q And I believe that in your examination by
8 Mr. Pratte you made the point that your report is
9 focused on the national framework for regulating
10 AML and the proposed revisions that you suggested
11 or proposed to that regime. Is that a fair
12 statement?

13 A Yes. Focused there, yes.

14 Q And you'll also agree with me that you did not
15 intend in writing your report to criticize either
16 the CPA profession in BC or Canada?

17 A Yeah, quite explicitly so.

18 Q And you also did not intend to diminish the
19 reputation of the CPA profession in BC or Canada?

20 A No, that was not the intention of my report and
21 that was made explicit early on.

22 MR. SOLTAN: Thank you very much. Those are my
23 questions, Mr. Commissioner.

24 THE COMMISSIONER: Thank you, Mr. Soltan. I'll now
25 call on Mr. Gratl on behalf of Transparency

1 International Coalition, who has been allocated
2 15 minutes.

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

4 Madam Registrar, would you kindly pull up
5 the BC -- the document entitled "BC's Public
6 Registry to Combat Money Laundering: Broken on
7 Arrival."

8 THE REGISTRAR: Sorry, is that the one that you
9 provided us earlier today?

10 MR. GRATL: Yes, that's correct.

11 **EXAMINATION BY MR. GRATL:**

12 Q Mr. McGuire, I'd like to draw on your expertise
13 in anti-money laundering to discuss the features
14 of British Columbia's Beneficial Ownership
15 Registry. Are you familiar with that registry?

16 A Not specifically, no.

17 Q Okay. Have you had an opportunity to review the
18 C.D. Howe publication "BC's Public Registry to
19 Combat Money Laundering: Broken on Arrival"?

20 A Yeah, I have.

21 Q Would you agree that a weakness of the current
22 British Columbia Beneficial Ownership Registry is
23 that there's no mechanism for proactive
24 verification of identification information from
25 beneficial owners?

1 A Yeah, I've spoken on this topic before. I find
2 this to be a failure with most beneficial
3 ownership systems broadly in Canada, which is
4 that the information is user submitted, not
5 subject to verification and not tied in any way
6 digitally to the beneficial owners or directors
7 or officers. We've seen some of the problems
8 that that causes across the world in terms of,
9 you know, unreliable information, information
10 which is -- includes fictitious people. And so
11 certainly to the extent that beneficial
12 ownership is opaque or concealed, it provides an
13 opportunity for those to who wish to exploit the
14 system to obscure their identities as owners and
15 controllers of those legal entities.

16 Q Would it be of benefit to the utility of the
17 Beneficial Ownership Registry to allow public
18 searchability and discoverability of information
19 contained in the database?

20 A Yeah, there are different models proposed about
21 how this should work, but, you know, when these
22 models have been made public, you know, one of
23 the wonderful things that happens is the ability
24 for, for instance, financial institutions to be
25 able to conduct links between objects so they

1 can truly understand the risk of the clients
2 they're dealing with. And the public in general
3 to understand transparency, particularly related
4 to corruption, to make linkages unknown. In
5 Australia there's been some wonderful
6 initiatives but they have kind of taken a back
7 door to it where they've looked instead to court
8 filings to try to piece together beneficial
9 ownership. But these sort of quasi-
10 investigative steps to uncover wrongdoing by a
11 more public registry I think could be
12 encouraged. Sure.

13 Q Thank you. And in terms of the possibility of
14 sanctions for false filings, is that a step that
15 you're of the view that might improve the
16 beneficial ownership registry?

17 A Yeah, Mr. Gratl, just as with, you know, the
18 conversations we've been having to this point,
19 you know, in the absence of enforcement, you
20 know, these regimes don't work particularly
21 well. There has to be monitoring and oversight
22 to ensure that there is compliance. And to my
23 understanding there's been very little in the
24 way of enforcement of non-compliance with
25 beneficial ownership-style rules that have

1 existed to this point.

2 MR. GRATL: Thank you, Mr. McGuire.

3 Mr. Commissioner, I'd like to that ask this
4 document "BC's Public Registry to Combat Money
5 Laundering: Broken on Arrival" authored by
6 Kevin Comeau be marked as the next exhibit.

7 THE COMMISSIONER: Very well. That will be -- I'm
8 sorry, where are we at now, Madam Registrar?

9 THE REGISTRAR: 378 [sic], Mr. Commissioner -- sorry,
10 398.

11 **EXHIBIT 398: BC's Public Registry to Combat**
12 **Money Laundering: Broken on Arrival, by Kevin**
13 **Comeau, C.D. Howe Institute - Commentary**
14 **No. 583, November 2020**

15 MR. GRATL: Madam Registrar, I'm finished with this
16 document. Thank you kindly.

17 Q Mr. McGuire, I'd like to draw on your expertise,
18 then, in providing advice to financial
19 institutions. You are aware that the Office of
20 the Comptroller of Currency, the OCC, which is a
21 department of the US Department of Treasury,
22 issued a \$1.92 billion fine to HSBC for money
23 laundering infractions in 2012?

24 A I am aware.

25 Q Now, that -- in your experience that

1 \$1.92 billion fine provided compliance incentives
2 for Canadian financial institutions, did it?

3 A Provided -- I'm sorry?

4 Q Sorry. Compliance incentives. That certainly
5 set the Canadian financial institutions,
6 particularly the chartered banks, on guard about
7 compliance with US money laundering requirements?

8 A No question. That was a significant sum of
9 money and, you know, there's a broad awareness
10 among Canadian financial institutions that -- of
11 their exposure to the risk of US compliance
12 initiatives.

13 Q And that's not true in the case of penalties
14 issued by Canadian authorities, is it?

15 A I haven't seen any Canadian penalty applied to a
16 foreign entity with one exception, which was --

17 Q Manulife.

18 A I've forgotten the --

19 Q Was it Manulife?

20 A No, no. Well, Manulife was one penalty. The
21 other was a UK company. It was a small company
22 that had a physical presence here.

23 Q Okay. And the only penalty issued by FINTRAC in
24 Canada was in 2006 to Manulife for \$1 million; is
25 that right?

1 A I think it was 2016 rather than 2006.

2 Q Oh, 2016. My mistake. Sorry.

3 A That's the only penalty that I'm aware of that
4 has been published.

5 Q And even then FINTRAC kept that or tried to keep
6 that penalty a secret.

7 A Yeah, that's right. There was -- at that point
8 the legislation gave them discretion to publish
9 or not to publish, and they did not publish at
10 the time the penalty was issued.

11 Q US authorities, including the US Federal Reserve
12 and the New York State Department, have
13 sanctioned Canadian chartered banks and required
14 them to remediate their anti-money laundering
15 systems. Is that correct to your knowledge?

16 A Yes.

17 Q And in particular it's the Bank of Nova Scotia,
18 the Toronto-Dominion Bank and the Bank of
19 Montreal that were sanctioned?

20 A I don't have direct knowledge, but that sounds
21 right.

22 Q Okay. And along with the sanctions, the US
23 authorities imposed audit requirements or
24 remediation requirements that required those
25 banks not only to improve their systems but to

1 allow the independent investigators based in the
2 United States to audit the AML systems for those
3 chartered banks.

4 A I am aware of a few of those orders, yes.

5 Q Okay. And are any of those orders ongoing at the
6 present time?

7 A I don't have direct knowledge.

8 Q All right. And to your knowledge has the Office
9 of the Superintendent of Financial Institutions
10 issued any remediation orders of that type?

11 A So I'm not aware of any penalties that OSFI has
12 issued. OSFI has ordered remediation for AML
13 for some financial institutions in Canada. Not
14 anywhere near to that extent, I don't believe.

15 Q Does OSFI have the institution capacity to issue
16 prudential guidance to Canada's chartered banks?

17 A I believe so.

18 Q And do they have the capacity to audit those
19 banks?

20 A So there was -- OSFI largely or has scaled back
21 significantly and disbanded its anti-money
22 laundering specific group and so they've largely
23 deferred their anti-money laundering function to
24 FINTRAC as the primary regulator. Their
25 guidance on the subject, what is -- it's called

1 B8. It's known as guideline B8 from OSFI. The
2 last time it was updated substantively was 2008.
3 It's been updated in minor ways because of
4 governance implications since, but not to keep
5 up with the changes in the legislation, the
6 changes in the regulatory risk, the changes in
7 the money laundering typologies, the changes in
8 the approaches to money laundering generally.

9 Q So you would conclude, then, that OSFI is just
10 not keeping up with the modern requirements for
11 money laundering in terms of issuing prudential
12 guidance to financial institutions?

13 A Yeah, there's -- you know, the 2008 guidance is
14 stale and I think it's not truly used as a
15 guidance document any longer. It's dated and
16 it's not particularly relevant to today's
17 legislation or environment.

18 Q Is FINTRAC in a position to issue prudential
19 guidance or audit financial institutions?

20 A Well, there are two parts to that question. I
21 suppose the first part of the question I'd say
22 is that FINTRAC is not a prudential regulator.
23 You know, it's not its role. And, second, in
24 terms of capacity, listen, as we went over just
25 in the evidence just a moment ago, you know, the

1 FATF lamented the capacity of FINTRAC to just
2 examine accountants in the country. When you
3 think about the sophistication of, you know, a
4 money laundering system at a financial
5 institution, you know, you would need -- and the
6 OCC in the US uses an army to assess compliance
7 with anti-money laundering and especially
8 sanctions legislation.

9 Q Is the United States or are the United States
10 authorities then taking extra -- claiming
11 extra-territorial jurisdiction over Canadian
12 financial institutions?

13 A I think it's fair to say that there's a
14 significant regulatory enforcement focus across
15 the border, especially to the extent that
16 Canadian financial institutions have a presence
17 in the US. And I think it's important to
18 remember that the US legislation, particularly
19 its sanctions, have an extraterritorial effect
20 built in particularly with the increased use of
21 secondary sanctions where the US will sanction a
22 party that deals with a sanctioned party. And
23 so there is that layering which certainly has
24 been encroaching on Canadian territory for some
25 time. The point is if you're --

1 Q Is the Royal Canadian -- oh, sorry. I didn't
2 want to interrupt.

3 A I was only going to say that if you're subject
4 to a secondary sanction, so even if, you know,
5 you're not a sanctioned violator yourself but
6 you deal with a sanctioned individual and you're
7 a financial institution, it could threaten to
8 crowd you out of the entire US dollar market.

9 Q All right. And is the Royal Canadian Mounted
10 Police to your knowledge assisting US authorities
11 investigating violations of US sanctions?

12 A You know, I think that there's a good deal of
13 cooperation cross border on that front -- on the
14 sanctions front.

15 Q Would it be fair to say that Canadian regulators,
16 OSFI and FINTRAC, have chosen to take a back seat
17 or been forced to take a back seat in relation to
18 the US regulators?

19 A Well, listen, you know, I think that the US
20 sanctions are the most powerful and persuasive
21 ones. And it's -- you know, in my practice I've
22 seen across financial institutions of all types
23 and sizes, a focus on complying with US
24 legislation far before Canadian ones and, you
25 know, that has to do with in part, you know, the

1 networks switches we use. Visa and Mastercard
2 insist on compliance with US standards to a
3 large extent, including their sanctions
4 requirements. And as a matter of practice most
5 reporting entities I know of screen against US
6 lists first and with greater detail than
7 Canadian lists because when it comes down to it,
8 there's very little enforcement of Canadian
9 sanctions.

10 Q In Canada there's an override for US sanctions
11 against Cuba so that Canadian financial
12 institutions are permitted by regulation or even
13 required by regulation to ignore the US sanctions
14 as they relate to Cuba; is that right?

15 A I'm aware of that. You know, in Europe they've
16 adopted a number of measures that are meant to
17 be safeguards against US sanctions. And so
18 yeah, in Canadian law there's -- there is that
19 Canadian law with respect to Cuba.

20 Q Would it be possible, then, for Canada to enact
21 regulations that would override US sanctions as
22 it relates to Canadian financial institutions
23 engaging in financial transactions here in
24 Canada?

25 A I suppose it would be possible. It creates an

1 entirely -- a very sticky wicket. You know,
2 when you face -- and financial institutions
3 grapple today with that Cuban regulation because
4 of the apparent conflict and knowing that there
5 are significant consequences of not recognizing
6 US sanctions.

7 Q All right. To your knowledge is either FINTRAC
8 or OSFI participating in the US-based remediation
9 orders, in that audit process?

10 A I don't know.

11 Q All right.

12 A Although there are MOUs that would permit that
13 information to be shared.

14 MR. GRATL: All right. And those are my questions,
15 Mr. Commissioner.

16 THE COMMISSIONER: Thank you, Mr. Gratl. Anything
17 arising, Mr. Soltan?

18 MR. SOLTAN: No, Mr. Commissioner. Thank you.

19 THE COMMISSIONER: Thank you. Mr. Pratte?

20 MR. PRATTE: No, thank you, Mr. Commissioner.

21 THE COMMISSIONER: Thank you. Mr. Isaac?

22 MR. ISAAC: No, thank you, Mr. Commissioner.

23 THE COMMISSIONER: All right. Thank you, then, for
24 your assistance that you've given to us in
25 relation to this very interesting and

1 complicated area. I'm very appreciative of the
2 time you've taken and the effort you've made to
3 educate us in relation to the accounting
4 professionals, Mr. McGuire. I expect we'll hear
5 more about that in the ensuing days as well.

6 But we will adjourn now until 9:30 tomorrow
7 morning then, Mr. Isaac.

8 THE REGISTRAR: The hearing is adjourned until
9 January 12th, 2021, at 9:30 a.m. Thank you.

10 THE COMMISSIONER: Thank you.

11 **(WITNESS EXCUSED)**

12 **(PROCEEDINGS ADJOURNED AT 2:22 P.M. TO JANUARY 12,**
13 **2021)**

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