

**EXCERPT FROM PROCEEDINGS AT HEARING
OF
JANUARY 19, 2021**

COMMISSIONER AUSTIN F. CULLEN

INDEX OF PROCEEDINGS

Witness	Description	Page
	Proceedings commenced at 9:30 a.m.	1
	Colloquy	1
Ezekiel Chhoa (for the commission)	Examination by Mr. Martland	3
	Examination by Ms. Stratton	45
Lindzee Herring (for the commission)	Examination by Mr. Rauch-Davis	49
Erin Tolfo (for the commission)		
	Proceedings adjourned at 10:42 a.m.	61
	Proceedings reconvened at 11:00 a.m.	61
	(In camera proceedings under separate transcript)	61
	Proceedings adjourned at 1:33 p.m. to January 20, 2021	62

INDEX OF EXHIBITS FOR IDENTIFICATION

Letter	Description	Page
	No exhibits for identification marked.	

INDEX OF EXHIBITS

No.	Description	Page
450	Biography of Ezekiel Chhoa	4
451	Biography of Lindzee Herring	5
452	Biography of Erin Tolfo	6
453	Brief of Kevin Comeau to FINA Committee respecting proposed changes to PCMLTFA, June 12, 2018	56

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

January 19, 2021
(Via Videoconference)

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

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

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

MR. MARTLAND: Yes, Mr. Commissioner. Today we have two panels and we'll be hearing from two groups of CAMLOs, or chief anti-money laundering officers. I have conduct of both panels. The first will be an open hearing with credit union CAMLOs. The second panel is one that pursuant to ruling number 24 which has been posted on the commission's website will be an in-camera hearing, in other words, a closed hearing which is not a public hearing for the benefit of the public. As I say that ruling is available on the website and gives an explanation of why that second session is proceeding as a closed or in-camera hearing. The participants will be attending and they are entitled to attend that in-camera hearing.

We have -- today is the first panel and I

1 expect the timing if I pull this off properly,
2 our timing will be such that we're beginning
3 with the second in-camera portion around
4 11:00 a.m. this morning.

5 So with that said I'm in a position to start
6 with the first panel. I should indicate that
7 counsel for the three witnesses is Ross McGowan,
8 who is also in attendance today.

9 The witnesses are Ezekiel Chhoa, Lindzee
10 Herring and Erin Tolfo. Madam Registrar, I
11 believe all three witnesses will affirm, please.

12 THE REGISTRAR: Witnesses, please unmute yourselves.
13 Thank you. Would each of you please state your
14 full name and spell your first name and last
15 name for the record. We'll start with
16 Mr. Chhoa.

17 THE WITNESS: (EC) My name is Ezekiel Chhoa,
18 E-z-e-k-i-e-l, last name Chhoa, C-h-h-o-a.

19 THE REGISTRAR: Thank you. And Ms. Herring.

20 THE WITNESS: (LH) First name Lindzee, L-i-n-d-z-e-e.
21 Last name Herring, H-e-r-r-i-n-g.

22 THE REGISTRAR: Ms. Tolfo.

23 THE WITNESS: (ET) My name is Erin Tolfo. It's
24 E-r-i-n. Last name is T-o-l-f-o.

25 **EZEKIEL CHHOA, a witness**

1 THE REGISTRAR: Exhibit 450.

2 **EXHIBIT 450: Biography of Ezekiel Chhoa**

3 MR. MARTLAND:

4 Q By way of background and as we see in that
5 write-up, you're the Vice President, Risk and
6 Compliance, with BlueShore Financial based in
7 North Vancouver. You've been head of the
8 BlueShore Financial's risk and compliance team
9 for the past four years serving in a number of
10 roles which includes among other things the role
11 of CAMLO or Chief Anti-Money Laundering Officer.
12 Do I have that right?

13 A (EC) That is correct.

14 Q And before joining BlueShore in 2016 you had
15 worked at HSBC, including leading a large
16 financial crime change program at that bank?

17 A (EC) That is correct.

18 Q Thank you.

19 Madam Registrar, if we could pull up the
20 next biography for Ms. Herring, please.

21 Ms. Herring, the same first question, which
22 is simply do you recognize that as being the
23 biography that you sent over to the commission
24 last week?

25 A (LH) Yes, it is.

1 MR. MARTLAND: I'll ask that please become the next
2 exhibit, Mr. Commissioner, 421.

3 THE COMMISSIONER: 451.

4 MR. MARTLAND: I'm sorry. 451.

5 THE REGISTRAR: 451.

6 **EXHIBIT 451: Biography of Lindzee Herring**

7 MR. MARTLAND: Those are statistics that are going
8 up.

9 Q Ms. Herring, the biography indicates that your
10 position is the Director of Corporate Security
11 with First West Credit Union in Langley; is that
12 right?

13 A (LH) Yes, that's correct.

14 Q You have over 20 years experience in fraud
15 management, AML or anti-money laundering and
16 anti-terrorist financing programs and corporate
17 investigations; is that right?

18 A (LH) Yes.

19 Q And you also have experience dealing with
20 investigations into fraud and AML working with
21 various levels of law enforcement and government
22 agencies?

23 A (LH) Yes.

24 Q Thank you. I'll turn to Ms. Tolfo.

25 And if we could please, Madam Registrar,

Ezekiel Chhoa (for the commission)
Lindzee Herring (for the commission)
Erin Tolfo (for the commission)
Exam by Mr. Martland

6

1 have a look at Ms. Tolfo's biography.

2 Ms. Tolfo, you recognize that as being your
3 biography?

4 A (ET) Yes, it is.

5 MR. MARTLAND: I'll ask that please become
6 exhibit 452.

7 THE COMMISSIONER: Very well.

8 THE REGISTRAR: 452.

9 **EXHIBIT 452: Biography of Erin Tolfo**

10 MR. MARTLAND:

11 Q Your position is indicated as Vice President,
12 Compliance Financial Crime Risk Management and
13 CAMLO at Coast Capital Credit Union?

14 A (ET) That's correct.

15 Q And since February of 2020 you've been
16 responsible for overseeing the development and
17 execution of a regulatory compliance and
18 financial crime risk management program for
19 Coast Capital?

20 A (ET) Correct.

21 Q That includes oversight of the AML and ATF
22 program, fraud risk management and corporate
23 investigations?

24 A (ET) Yes.

25 Q And by way of background, before joining Coast

1 Capital in 2014 you worked at a national law
2 firm?

3 A (ET) That's correct.

4 Q As a lawyer?

5 A (ET) Yes.

6 Q Thank you. So I'm going to start with a fairly
7 broad question, and I welcome the panel members
8 to direct or to basically chime in where you
9 think there's something you'd like to share or
10 add to or develop in terms of an answer to
11 questions. My first question would be to ask
12 you to please provide to the Commissioner a
13 description of the work that credit unions do in
14 order to come to grips with money laundering or
15 apparent money laundering activity.

16 So in terms of preventing those -- that kind
17 of activity, identifying when it may be
18 occurring and then addressing whether suspicious
19 transactions or other activity causing concern.

20 A (ET) I'd be happy to answer that.

21 Q Thank you.

22 A (ET) So credit unions are in the business of
23 conducting banking, so we engage in financial
24 transactions, and because of that it means we
25 have data about financial transactions that

1 FINTRAC and law enforcement need where it may
2 have some connection to money laundering or
3 terrorist financing. So we are a reporting
4 entity that supplies data to FINTRAC and we are
5 deeply committed to helping support the national
6 and international fight against money
7 laundering. We have requirements that we have
8 to ensure we fulfill in order to support FINTRAC
9 and law enforcement in their fight against money
10 laundering which includes requirements around
11 client identification, recordkeeping, compliance
12 regime requirements and reporting obligations to
13 FINTRAC, and we fulfill these obligations while
14 balancing a myriad of other legislative
15 requirements, including privacy requirements.
16 The work is really an enterprise-wide effort.
17 And so if we think about going back to sort of
18 our core function of our business that we are in
19 the business of banking and engaging in
20 financial transactions, it means that, you know,
21 we have to look for and identify issues that
22 meet the requisite threshold and share that
23 information where it may support FINTRAC and law
24 enforcement. We look at transactions and we
25 look at things that might suggest money

1 laundering and when we identify something that
2 meets the requisite threshold we take certain
3 steps to validate and ensure and then we
4 transmit information to FINTRAC. And of course
5 if we encounter something very serious that
6 requires more immediate steps we will take steps
7 to go directly to law enforcement.

8 So as I mentioned earlier, it's an
9 enterprise-wide effort. There are of course
10 points of contact with our members and customers
11 and that's where we fulfill certain obligations
12 around knowing who we're dealing with,
13 collecting information associated with that.
14 Then there are methods by which we ensure that
15 we are looking for any indicators which may
16 suggest money laundering and there's escalation
17 points and segregation of duties to ensure that
18 we're always looking at it from a variety of
19 angles and make sure that we are meeting our
20 obligations around reporting where there are
21 things that may suggest money laundering.

22 We have checkpoints in place. We have
23 oversight in place to ensure that what we're
24 doing is adequate and effective. And there's
25 also -- you know, our whole enterprise plays a

1 role in terms of looking at products and
2 delivery channels so as we're creating new
3 products or looking at new ways to meet the
4 needs of our customers we also are mindful in
5 thinking about how those might be manipulated
6 and also ensuring that we collect the necessary
7 information we need to in order to continue to
8 make informed assessments and supply information
9 to FINTRAC. Sorry. Is there a ...

10 Q No. This is helpful. I think you can carry on
11 and I'll have some followup questions.

12 A (ET) Certainly. So the way we put all of this
13 together is we really leverage FINTRAC guidance
14 and industry associations and other financial
15 institutions in order to ensure that we can stay
16 up to date on key changes and information, and
17 of course we cascade that throughout the
18 organization in order to make sure that we are
19 continuing to look for things that we should be
20 looking for. And at the end of the day our
21 efforts are really to continue to support
22 FINTRAC and law enforcement efforts by providing
23 the necessary information so that we can -- so
24 that they can leverage that and act on the data
25 we supply.

1 Q And you describe, and I think I'm right to say,
2 but you can tell me if I have this off, that
3 among the three credit unions who are with us
4 today Coast Capital is the biggest and indeed
5 one of the biggest in the province. From the
6 point of view of understanding what a CAMLO is,
7 the need, I take it there's a requirement that
8 there be a person in the position of CAMLO and
9 indeed even some requirements in terms of how
10 that person is reporting or answering up the
11 chain or to the board of the bank where credit
12 union, could you give us a sense first with
13 Coast Capital and then I'll turn to your
14 colleagues to give a sense at their institutions
15 of the role of the CAMLO and how that person,
16 what responsibilities they have as well as where
17 they're situated within the structure of a
18 credit union?

19 A (ET) Absolutely. So FINTRAC does provide
20 specific details and information around the need
21 to have a CAMLO in place and we have mandates
22 and there's actually fairly prescriptive details
23 that outline what our mandate is. There is of
24 course flexibility, which is, you know,
25 appreciated as there are a variety of different

1 sizes of financial institutions, as you've
2 alluded to. So institutions are able to make
3 their own decisions around how they structure
4 that and what role the CAMLO plays, but
5 ultimately the CAMLO is responsible for
6 overseeing the program and so acts as sort of a
7 checkpoint and a challenge point in order to
8 ensure that the right steps are taken to test
9 the controls that we have in place and to make
10 sure that training and information is cascaded
11 throughout the organization. And the CAMLO also
12 reports in to the board of directors often times
13 and up to other senior management. So provides
14 that information so that there really is an
15 enterprise-wide view and a lot of information
16 supplied right at the top of the house to ensure
17 that everyone from the top all the way down to
18 our member service representatives understands
19 the requirements and sort of an assessment of
20 where we are at on that.

21 Q And perhaps before I turn to your colleagues
22 I'll just add one add-on question which would be
23 to ask you to provide a sense of the kind of a
24 team, Ms. Tolfo, that you have working under you
25 on the AML front in particular.

1 A (ET) So that's a challenging -- I mean, I can
2 certainly give details about the number of
3 people in my team, but I think what I would want
4 to just stress is the fact that team size is a
5 bit difficult to compare because it depends on
6 how you have your functions set up. So, you
7 know, my team has a number of individuals that
8 are focused on looking for specific alerts
9 through their channels and then there are a sort
10 of escalation point where we've got a team of
11 people who review that. But, you know, it's an
12 enterprise effort in that we rely on all of our
13 frontline people to really play an active role
14 as well. And of course they don't report
15 directly into me. They report in through their
16 own channels, but we do have oversight over the
17 actions they take. So hopefully that addresses
18 the question.

19 Q Mr. Chhoa, would you be able to speak to that
20 very question about the structure of how money
21 laundering activities occur at your institution
22 BlueShore Financial, please.

23 A (EC) Sure. Similar to my colleague's Erin, the
24 CAMLO is an independent position so there's a
25 reporting line into the board. So as the CAMLO

1 for BlueShore Financial I have direct access to
2 the board, I have direct access to our senior
3 executives, and that's written into our policies
4 in terms of just having that independence
5 function.

6 And then in terms of size of team I think.
7 You know, Erin really nailed it. It really
8 depends on how the activities are structured.
9 You know, my team is responsible for a number of
10 things in addition to money laundering, so you
11 know, we're focused on kind of oversight and
12 governance and also reporting activities, but we
13 certainly rely on the frontline staff that are
14 interacting directly with clients to escalate
15 issues as they see them.

16 Q I take it from the point of view of frontline
17 staff, I mean, a simple level that may be the
18 teller who's interacting with a given person on
19 something, I presume there's a level of training
20 or awareness, information that's passed along to
21 those people to make sure they're mindful of the
22 right kinds of considerations or indicators?

23 A (EC) Absolutely, yes. It's a requirement of
24 FINTRAC as part of our AML program to have
25 training as a component of it and so there is

1 training that's mandatory for all staff on the
2 AML front.

3 Q Ms. Herring, if I could turn to you, please, to
4 speak to this from the point of view of First
5 West.

6 A (LH) Sure. Really I don't have a lot to add
7 after my colleagues here. But really I can
8 speak to our team. I'm not the CAMLO for First
9 West, but what I can explain is the elements of
10 the AML program and things that our team
11 actually make sure that we're responsible for
12 and we move forward.

13 So I would say overall monitoring systems.
14 Any of our investigations and reporting that
15 would all be part of the team I'm responsible
16 for, as well as obviously working with the
17 stakeholders and the different business lines to
18 ensure that compliance is in effect and is
19 effective, meaning that if there's any policies,
20 procedures, guidelines that need to be updated
21 based on any changes to legislation, any changes
22 within the environment, we're the ones that work
23 with the business to make that happen.

24 Q And, Ms. Herring, when it comes to describing
25 sort of the workflow or the work involved in AML

1 efforts at the credit union, you mentioned the
2 monitoring systems. We've heard a little bit
3 about the kinds of guidance that might be used
4 to inform that work. Could you tell us a little
5 bit about what that work looks like and what it
6 involves, please.

7 A (LH) I would say it's very -- all system based.
8 Obviously technology is really important in the
9 anti-money laundering terrorist financing space.
10 There's various system that credit unions will
11 use in order to manage that which have different
12 analytics that will trigger certain events that
13 need to be closely looked at. All of our
14 reporting again is all electronic through
15 systems to FINTRAC directly and that's very
16 prescriptive reporting.

17 Q With respect to the question of reporting, when
18 you use -- we've heard that term already a few
19 times and heard, I think, Ms. Tolfo describe
20 that in relation to FINTRAC and those
21 obligations in that system, could you help us
22 understand, setting aside FINTRAC for at least a
23 moment, are there other kinds of reporting that
24 relate to money laundering activity that the
25 credit unions are involved in to any other --

1 whether that's other regulatory bodies or
2 provincial bodies, or is it really focused on
3 and maybe restricted to FINTRAC?

4 A (LH) I think it's up to the credit union to
5 manage what needs to be escalated and I'll use
6 the example, and Erin touched on it earlier, is
7 that if we have any investigations that we feel
8 need to be escalated to law enforcement, for
9 example, that is the decision of the credit
10 union investigation team to make sure that that
11 does get forwarded to the appropriate
12 jurisdiction, but other than that we have very
13 limited reporting to BCFSA when it comes to
14 money laundering in particular. We do have one
15 monthly report we actually report up to them
16 regarding Canadian sanctions, but that is the
17 only other report that's officially required.

18 Q And the BCFSA is the BC financial services
19 agency or authority?

20 A (LH) Yes, that's right, sorry.

21 Q Thank you. I'm just making sure I have it
22 right. And I may not, but close. I think we're
23 talking about the same thing. It used to be
24 FICOM?

25 A (LH) That's right.

1 Q Yeah. Let me pause to offer Ms. Tolfo and
2 Mr. Chhoa a chance to add to that if there's
3 anything they'd like to comment on.

4 A (ET) I don't have anything to add.

5 Q Thank you. With respect to the -- when you
6 describe escalating to law enforcement, what
7 does -- does that generally refer -- I'll turn
8 this back to you, Ms. Herring, since you'd
9 mentioned that point. Does that typically
10 involve the local police force in whatever area
11 the credit union is in, or are there other
12 agencies or bodies or other arms of police that
13 you'd be contacting?

14 A (LH) Our primary interactions with law
15 enforcement in general is various jurisdictions,
16 but as it pertains to money laundering
17 specifically I would say we do have dedicated
18 RCMP email address that credit unions and
19 financial institutions can use to actually
20 forward STRs, suspicious transaction reports,
21 directly to them to have a closer look at. That
22 again is out of the discretion of the credit
23 unions' investigation teams to determine if
24 that's something that they want to forward on or
25 feel that it's necessary. Other than that any

1 of the direct connections with law enforcement
2 we have are majority through their economic
3 crime divisions, financial crime sections,
4 municipal RCMP, and it's mainly fraud related
5 and usually in different capacities; it's us
6 reporting to them or information requests and
7 production orders. So generally that's our
8 interaction.

9 Q Is that true for the other financial
10 institutions that are here, Ms. Tolfo?

11 A (ET) Yes.

12 Q Mr. Chhoa?

13 A (EC) Yes. I think one thing I would add is
14 typically the information flow is one way, so we
15 do send information in and if there's an
16 investigation or something that gets kicked off
17 we typically don't hear become unless there's a
18 further production order or something like that.
19 But typically it is a one way communication and
20 reporting.

21 Q And when we speak about that and you describe, I
22 guess, a dedicated email address that is there
23 for the purpose of credit unions reaching out to
24 RCMP, do you know if that's RCMP "E" Division as
25 opposed to local detachments?

1 A (LH) I believe it is, Brock, but I'm not sure
2 100 percent. It has changed.

3 Q And so in relation to that is there -- has it
4 been the case now or over time that there is a
5 sort of set of dealings or a point of contact
6 with RCMP where there's a particular person
7 whose name and number that one would call up and
8 have the point of contact that way, or is it
9 more likely to be through the email? I guess
10 related to that as I hear you describe it, the
11 email sounds a little bit anonymous; it could be
12 directed to whoever it is that's going to be
13 assigned the followup? Ms. Herring, I mean over
14 the years have you had sort of a point of
15 contact at RCMP who is the person you'd simply
16 get on the horn with to speak about something or
17 alert them to something?

18 A (LH) I would say -- I can comment on the fraud
19 side mainly, Mr. Martland. I think that's been
20 quite common. We do have contacts in the
21 economic crime sections, especially in the
22 jurisdiction where we actually do business. I
23 would say that's definitely something we built
24 relationships with. But as for the money
25 laundering side of things there hasn't been a

1 direct contact that I've been given through
2 the years.

3 Q Ms. Tolfo or Mr. Chhoa, any different answer to
4 that? Has there ever been -- setting aside I
5 assume there's no end of potential criminal
6 things that can happen at banks from robberies
7 to fraud and the more familiar kinds of things,
8 but for a moment setting those things aside and
9 focusing on money laundering activity in
10 particular, over the years have you had a point
11 of contact which is really a go-to person as
12 opposed to the more anonymous email address?

13 A (EC) Maybe I'll offer this, Mr. Martland, you
14 know, as my colleague Ms. Herring had said,
15 primarily the interactions with law enforcement
16 are related to fraud. You know, and so from a
17 money laundering perspective it's -- there's
18 much less communication. You know, we're
19 located in North Vancouver, and we have a great
20 relationship with North Vancouver RCMP. We
21 participate in fraud awareness events and that
22 type of thing. But when we're talking
23 specifically about money laundering, you know,
24 money laundering is a very difficult crime to
25 prove, and so for us we are not law enforcement,

1 you know, we're not -- our job is primarily
2 reporting the data and ensuring that the data
3 gets into the hands of the people who are in a
4 position to investigate. So I think, you know,
5 we don't communicate with law enforcement saying
6 hey, look, we believe there's money laundering
7 because, you know, quite frankly most of the
8 time it's suspicion versus we truly believe
9 there is a crime here.

10 (ET) I mean, I'm happy to sort of just
11 expand a bit from our perspective. Really the
12 struggle is that we have a legislative setup
13 where we really have to be mindful of privacy
14 obligations and so we don't have the same level
15 of sort of permissive information sharing in the
16 legislative regime as there is in the fraud
17 space. And I think actually that was touched on
18 in the Maxwell report, and I agree with that
19 from our perspective. So that does add a layer
20 of challenge in that we're trying to find that
21 balance between escalating things and the
22 purpose for which we're escalating and ensuring
23 that we are walking the fine line in balance on
24 what we may share and what we may not.

25 Q Well, that's very useful. And I think you are

1 referring to a witness we heard from last week,
2 Nick Maxwell, and his report, and among other
3 topics he I think described really a fraud
4 exception that would allow for different rules
5 for information sharing. I take it from your
6 answer, Ms. Tolfo, what you're suggesting from
7 your point of view is where there is a similar
8 ability to have open information moving around,
9 not just in fraud but for money laundering that
10 would be something that you'd see some value in?

11 A (ET) It would certainly allow the opportunity to
12 share information that is more specifically
13 related to money laundering as opposed to
14 keeping the dialogue specifically in the fraud
15 space, yes.

16 Q We've been speaking about this in the context of
17 the institutions speaking with and dealing with
18 law enforcement and police. What about within
19 the sort of private to private kinds of
20 communication or information sharing? Are
21 there, for example, discussions that happen
22 between one or a few credit unions to alert each
23 other to people, situations, typologies, what
24 have you, and if so how do those occur?

25 A (LH) I can speak to that a bit.

1 Q That actually generated three hits on the panel.
2 So let's start with Ms. Herring and we'll move
3 to your colleagues. Thank you. I appreciate
4 that, so that's not a criticism. Go ahead.

5 A (LH) We're passionate about information sharing.
6 I think the one thing I'd like to just add on
7 information sharing is -- and this includes law
8 enforcement government agencies as well, is that
9 there are certain associations such as the
10 International Association of Financial Crime
11 Investigation [sic], so that is one group
12 that -- well, I've been a member for 15 years
13 and they are -- you have representation of all
14 those different areas and it's a very informal
15 way to talk about issues. Fraud is really
16 primarily what they talk about, but there is an
17 element of terrorist financing and money
18 laundering as well. Those groups do have
19 representation of all those different areas and
20 that allows that information sharing. It's very
21 informal, so details, obviously privacy needs to
22 be top of mind, but it allows us to talk as
23 investigative groups. So that is a channel
24 which helps and there's chapters all across
25 Canada that interact the same way. From an

1 information sharing and the avenues of the
2 ability to do so, there's channels such as
3 there's the BCPIF, which is the Bank Crime
4 Prevention and Investigation Framework, and the
5 credit unions have something similar which I'm
6 sure with you're familiar with. It's the credit
7 union office of crime prevention and
8 investigation. And these are actually
9 mechanisms for us to communicate between
10 investigators, between credit union to credit
11 union, and it's in a formal way to actually
12 provide disclosures. And that you have to have
13 evidence, you have to have reasonableness to
14 disclose information, but it is a process and it
15 is something that between banks and credit
16 unions can be a challenge as well. But
17 definitely the avenues are there to be used. I
18 think they're under utilized. They do not
19 specifically state just for fraud. They do say
20 financial crime. However, they have been
21 primarily used for fraud. So there are some
22 channels and mechanisms in place for financial
23 institutions to do better. We do need that
24 backing, going to Erin's point. You know,
25 having a section 314(b) like the US would be

1 ideal for the financial institution space to be
2 able to have that protection for us when we're
3 dealing with these complex investigations.

4 Q You mentioned that section, I think a section of
5 the *Patriot Act* which was referred to in
6 Mr. Maxwell's evidence, but that is a provision
7 that as I understand would basically enable
8 there to be this sort of flow of information
9 with some legislative structure or protection
10 for that occurring?

11 A (LH) Absolutely.

12 Q All right. Ms. Tolfo?

13 A (ET) Yeah. I mean, in terms of sharing with,
14 you know, credit union to credit union or credit
15 union to bank, I would echo Ms. Herring's
16 comments. If we go back to the sort of
17 underlying key point here, is financial
18 institutions, credit unions included, are really
19 deeply committed to supporting and doing our
20 part to support the fight against money
21 laundering, and, you know, the challenge that we
22 have is we are so heavily regulated, it's
23 complex. There are a lot of laws and
24 regulations that often conflict with one
25 another. And you know, I think that often tends

1 to end up with individuals and institutions
2 taking a really conservative approach around
3 things. So I think about an example where, you
4 know, there's legislation that prohibits credit
5 unions or financial institutions or any
6 reporting entity from tipping off; right? So
7 the threshold is intentional, but if you think
8 about the effect of tipping off a consumer, that
9 if you even unintentionally tip a consumer off
10 that you've now filed a suspicious transaction
11 report on them, the effect is that now they know
12 that and they are going to learn something about
13 how to subvert the system in the future. So,
14 you know, I think there's an element of
15 conservatism, and the same happens with this
16 concept of de-marketing. So choosing to no
17 longer work with a business or a consumer
18 because you've decided that the risk is too high
19 and we are challenged in terms of not being able
20 to share those details, specific details because
21 of privacy law challenges and there's a lot of
22 validity to the privacy law area but, but it
23 also make it is very challenges in that each
24 institution is there for sort of on their own in
25 the sense that they have to separately catch

1 indicators around why someone may be coming to
2 open up a new bank account having no idea that a
3 financial institution down the street has just
4 chosen to no longer do business with that
5 person.

6 So it's a fine balance in terms of not
7 wanting to supply information that is going to
8 enable the people who want to launder money to
9 get smarter to be able to improve their ability
10 versus making sure that we can freely share the
11 information to try and support ultimately
12 FINTRAC and law enforcement in using the data we
13 provide.

14 Q Ms. Tolfo, to pick up on the scenario you just
15 described, I take it in that example you may
16 have someone raising enough concerns for the
17 bank that their assessment is this is too risky,
18 we're not going to bring this person on as a
19 client, or alternatively if they are a client
20 they're so-called de-marketed and essentially
21 sent out of the bank or declined for certain
22 kinds of activities or support. And then
23 because of privacy legislation and perhaps
24 coupled with a very careful or risk adverse
25 approach -- I'm not criticizing that, but

1 because of a concern about privacy, that one
2 credit union might watch that suspicious person
3 go down the street, maybe learn a little bit
4 from what happened the first time and enlist at
5 a different credit union, but the first one is
6 essentially powerless to reach out to the second
7 and say, you should be aware that this is what
8 we saw?

9 A (ET) That is correct. That's the challenge.

10 Q Mr. Chhoa?

11 A (EC) Yeah. It's hard going last. I absolutely
12 echo what my colleagues have already said. In
13 terms of information sharing my experience has
14 been that it's easier and much -- it's more
15 prevalent to talk about themes. You know, this
16 is a theme of a pattern of activity that we're
17 seeing, but often time those themes, I mean,
18 they emerge as themes because it's a pattern of
19 activity and so the activity itself has already
20 occurred and so from a timeliness perspective
21 the information sharing, you know, when we're
22 talking about themes is just it's not as timely.
23 So the tactical information sharing on specific
24 cases, you know, that's quite rigorous. As
25 Ms. Herring had alluded to there's a very

1 specific framework and very specific criteria
2 under which you're allowed to or not allowed to
3 share. So yeah, maybe I'll just stop there in
4 terms of just the details of what we're sharing.

5 Q But I take from your comment that a big part
6 of -- an important consideration in thinking
7 about information sharing generally is to avoid
8 situations where the information becomes stale
9 because for whatever reasons, but you ideally
10 want to have quite an immediate flow of
11 information back and forth.

12 A (EC) Correct. I'll just add that, you know,
13 just as the credit union system is passionate
14 about anti-money laundering I think we're also
15 passionate about privacy. And I think
16 there's -- you know, I act also as the privacy
17 officer for the organization and so when I wear
18 a privacy hat there are times when, you know, I
19 simply cannot share a piece of information even
20 though from a money laundering perspective I may
21 say hey, I want to share that, but from a
22 privacy perspective you just cannot. And so it
23 is a delicate balance and it's something that I
24 think increased clarity in legislation would be
25 very helpful for the credit union system.

1 document sharing request from FINTRAC and so
2 there will be a list of documents that they
3 request from the financial institution. We will
4 provide that information after they have
5 reviewed it. Then they typically do either a
6 desk review or onsite review. They may come
7 onsite and they may have questions about the
8 documents that we have provided. They will
9 interview various staff members and they'll also
10 pull sample transactions and look at specific
11 transactions and determine whether or not we've
12 met our reporting obligations.

13 Q And what's the mechanism by which the
14 information is conveyed? Is that a letter
15 essentially or a report from FINTRAC back to the
16 financial institution to tell them what findings
17 have been reached and/or advice that's given?

18 A (EC) Yes. So the initial letter is a letter
19 that is sent to the financial institution and in
20 correspondence there's a secure channel that we
21 use to communicate documents and such. And then
22 at the exit, after the exit interview they will
23 produce a final letter for the institution with
24 any findings or recommendations that they've
25 discovered.

1 Q Ms. Tolfo, are those interactions, the
2 examination process with FINTRAC, is there sort
3 of a set calendar that it occurs every two years
4 or a certain expectation as to how recurrent it
5 is?

6 A (ET) I'm not aware of a set calendar, although I
7 have only been in my chair since last February,
8 but my understanding is they do visit with a
9 relative sort of frequency. There is an ongoing
10 dialogue generally around what their
11 expectations are. And of course with COVID
12 things have been a little bit different as
13 everyone has sort of had to pause and reset
14 calendars, but, you know, we are given ample
15 notice and we're sort of provided with
16 information so that we know that we are able to
17 engage in a meaningful dialogue with them around
18 the exams.

19 Q Mr. Chhoa referred to a desk exam or desk
20 examination. What does that describe?

21 A (ET) I actually have not been through one of
22 those as CAMLO, so perhaps one of my colleagues
23 would be better placed to answer.

24 Q Mr. Chhoa?

25 A (EC) Yeah, I'm happy to take that. So a desk

1 exam is just one where they don't physically
2 come onsite. They will review everything
3 remotely. They may still conduct interviews
4 over the phone. They're just not physically
5 present onsite.

6 Q And so the examination process seems to be one
7 where there's a back and forth. Is the
8 reporting -- Mr. Chhoa, maybe I'll start with
9 you for this, but is the reporting, unlike the
10 examination, is it a one-way street where the
11 financial institutions are sending that
12 information to FINTRAC, or is there information
13 received back from FINTRAC, and if so what kind
14 of feedback is there?

15 A (EC) On a day-to-day basis I would say it's one
16 way. We send data into FINTRAC. In terms of
17 feedback we do receive feedback during exams as
18 an example. So they will -- during our last
19 FINTRAC exam, the examiner went through some of
20 the reporting and had a discussion with us on
21 what they really liked seeing and what was
22 effective. So there is some feedback but
23 usually that takes place during an examination
24 versus on a day-to-day basis.

25 Q Any different answer from either Ms. Tolfo or

1 Ms. Herring?

2 A (ET) I would just expand a little to say, you
3 know, I think there's a big commitment from
4 FINTRAC to continuing to work on their approach
5 and engaging in a dialogue and they know and we
6 know that it's really important to maintain that
7 dialogue and they have really recommitted to it
8 over the past number of years and they are
9 active participants in industry association
10 meetings and continuing to look at advancing
11 communication channels. So I think what my
12 colleague explained is accurate, but there are
13 other ways that information is cascaded and they
14 do take the opportunity to provide information
15 bulletins and communicate through industry
16 channels.

17 Q I asked a question earlier about the notion of
18 having really sort of a point of contact, for
19 example, at the local police station for the
20 bank robbery investigation or what have you. Is
21 there any analogue to that with FINTRAC that any
22 of these the three of you have, a counterpart or
23 colleague at FINTRAC who would be -- where you
24 have that level of ability to reach out to
25 somebody specifically?

1 A (LH) We do have a designated Western Canada
2 contact. We use them if we have any general
3 questions and it's their responsibility to take
4 it away if they are unable to answer that. So
5 they may have to take it to Ottawa and have
6 questions answered for us, but we do have a
7 dedicated person within Western Canada to
8 contact, yes.

9 Q Thank you. I'm going to turn to a question that
10 is a bit broad. A number of these questions are
11 broad. But I'm wondering this: with respect to
12 the -- I think I read a statistic to the effect
13 that 90 percent of banking in Canada falls to
14 the big six national banks, and so the credit
15 unions in terms of their size and structure and
16 being specific to this province are certainly
17 obviously smaller compared to the national
18 banks. Is there attention from the point of
19 view of the credit unions with being expected to
20 live up to the regime that one level might seem
21 like a one-size-fits-all regime and does that
22 make, does that lead to challenges for smaller
23 credit unions in particular?

24 A (EC) Yes, Mr. Martland, I'll start on this one.
25 I mean, very simply yes. There are challenges,

1 you know, being a smaller financial institution.
2 And that is simply because there are a number of
3 fixed costs that must be borne by the financial
4 institution regardless of size. So I can give a
5 couple of specific examples that might help
6 illustrate this. The first is, you know, we
7 talked about software and technology and how
8 important that is. So a piece of AML software
9 costs the same regardless -- well, not exactly
10 the same. It depends on, you know, negotiation
11 and all that, and I'm just mindful here of
12 telling the truth here. But it's a cost that is
13 borne regardless of whether you're a small or
14 large institution, and so there's that. The
15 other point or other example that I can give is
16 just around human resourcing. So as we've
17 explained smaller credit unions we have staff
18 that are dedicated to anti-money laundering
19 activities, but we also wear a number of
20 different hats and we're responsible for other
21 things. And so, you know, it's very different
22 when you're thinking of a very large, either one
23 of the big six or a large international bank,
24 you know, where they have potentially hundreds
25 of staff that are dedicated to this work. You

1 know, they can avail themselves of a couple of
2 things. One, is they can offshore some of that
3 work to lower-cost centres, which clearly as a
4 smaller FI, financial institution, we're not
5 able to do. The other thing, too, is just
6 purely from a training perspective they are able
7 to have a more junior -- they can bring in a
8 junior level of staff and train them up.
9 Whereas for us because they have such a wide
10 scope of responsibility, you know, those
11 resources, they are few and far between who have
12 that breadth of knowledge and experience. And
13 so it's harder to attract and retain that type
14 of individual. So that's something that, you
15 know, the smaller you get is the bigger of a
16 challenge that that becomes.

17 Q Are there solutions -- sometimes I think we've
18 learned a bit about third party providers or
19 something called centrals that will help to
20 permit especially smaller credit unions to
21 whether that's AML policies or other kinds of
22 supports that are there on offer so that not
23 every small institution has to invent the wheel
24 or design a program afresh?

25 A (EC) Yes. Absolutely. So Central 1 does have

1 AML services that they provide regardless of
2 credit union size. They are available. And
3 they do a lot to help the credit union system,
4 especially the smaller credit unions in ensuring
5 compliance with all of the regulatory
6 requirements. The one point around that I'd
7 like to make, though, is that even though the
8 smaller credit unions have outsourced the
9 activity, they cannot outsource the
10 responsibility. So the responsibility still
11 rests on a very small credit union to ensure
12 compliance regardless of who performs the
13 activity.

14 Q And I wonder if the panel members could respond
15 to this concept or point. To the extent that
16 credit unions are quite likely to be rooted in
17 and very closely tied to a particular community,
18 first geographically, secondly to some extent
19 perhaps market segment or clientele or other
20 things that bring people together in that credit
21 union setting, does any -- do those sorts of
22 dynamics which I understand to apply to many or
23 maybe most of the credit unions in the province,
24 is that -- do you think that's accurate, but
25 secondly, do you think if so does that have any

1 connection to or effect on anti-money laundering
2 efforts?

3 A (LH) I can take that one, Mr. Martland. One of
4 the things I think we're -- and like you said,
5 we're deeply rooted in the communities. We're
6 very community focused where I think sheer --
7 you know, it allows us to have a little bit more
8 of -- and I would say a strong know your client
9 type of process that could be a bit different
10 based on size. The other thing I would probably
11 comment on which I think is a really positive
12 thing is that given our size and given the fact
13 that we are -- we have that close connection to
14 the frontline team, and when I think about our
15 team, for example, we have the ability to have
16 that personal connection with our front line
17 allowing questions to be answered that you may
18 not have that ability in a large, large
19 financial institution. And what that allows is
20 just again more appreciation about AML risk
21 overall, I would say. It just gives us that
22 ability. So if there is a positive, I would say
23 that is one of the good things we see as a
24 benefit overall.

25 Q I just have a few last questions, and one point

1 I wanted to ask about had to do with whether
2 there are in general terms particular sectors of
3 the economy or areas of activity that the credit
4 unions look to individually or collectively and
5 identify as being really too big of a risk in
6 terms of the risk of money laundering activity
7 to the point that those institutions avoid
8 bringing on clients in that sector. Does that
9 occur?

10 A (ET) I'm happy to answer that one. So you know,
11 generally speaking each credit union and each
12 financial institution has to conduct their own
13 assessments of risk up against the capabilities
14 that they have to make sure that ultimately the
15 institution is meeting the regulatory
16 requirements. You know, as industries evolve
17 and as they start, so new areas of emerge and
18 then there becomes sort of regulation or
19 oversight, it allows financial institutions to
20 start to get to know the business a bit more.
21 So I will use just an example. If you think
22 about the cannabis industry that has gone from
23 being completely illicit to now regulated, it
24 allows institutions to place a level of reliance
25 on the government infrastructure and regulation

1 there and then a financial institution may
2 choose to decide to sort of put in their own
3 then verification process, their own risk
4 tolerances and to then decide yes, we're going
5 to place a level of reliance on the regulation
6 that exists and go ahead and accept that risk.
7 But it really does remain an institution to
8 institution decision for each financial
9 institution, each credit union to decide on
10 their own. And then you know, in terms of sort
11 of risks generally, if we talk about themes,
12 things like and especially in today's day and
13 age, cash-based businesses, right, those will
14 just inherently be a higher risk. Of course
15 doesn't mean that -- financial institutions are
16 simply not going to allow anyone that has a cash
17 based business, but it certainly does often
18 drive higher levels of scrutiny and making sure
19 that you've got the right controls in place to
20 be monitoring and to be reporting and providing
21 the data that's necessary to FINTRAC.

22 (EC) If I could add on to that, I would say
23 because of the regulatory burden that is
24 required, so if it's a higher risk business or
25 industry there's definitely going to be a higher

1 level of, you know, process and resource that is
2 going to be allocated and dedicated to those
3 businesses. And because of that each -- as
4 Ms. Tolfo has said, each organization has to do
5 their own calculation as to whether or not the
6 effort that is required to ensure compliance is
7 worth engaging in that business.

8 And I will say that, you know, similar to my
9 comments before about credit unions being
10 smaller, you know, it sometimes does limit
11 strategically what businesses we can support or
12 not support because of some of the rigour around
13 monitoring some of the higher risk industries.

14 (ET) Actually that just reminds me of
15 another thing that I think is worth adding which
16 is there are instances where we rely on service
17 providers to help support the front-end user and
18 sometimes risked-based decisions are actually
19 based on a service provider on the back end if
20 they have a risk tolerance that is tighter than
21 ours and sometimes institutions just simply
22 aren't able to go down a certain path because of
23 that, so that's another layer that we have to
24 factor in.

25 Q You mentioned as an example cannabis operators,

1 are money service businesses another category
2 that might raise concerns?

3 A (ET) Yeah, I mean, it's another example of a
4 business that at this point less regulation than
5 the cannabis industry so it is -- it's more
6 complex and more challenging. You know, there's
7 the additional layer of not having that rigour
8 around knowing that a government, you know,
9 there's a concrete government sets of
10 regulations that allows us to then place a level
11 of reliance on what the government has set up.
12 So it's more of an emerging one that I think
13 financial institutions just have to take a look
14 at.

15 (EC) With respect to money service
16 businesses, one of the things to consider, too,
17 something that we've contemplated is it's almost
18 embedding one financial institution within
19 another. So they're doing a lot of transactions
20 and things but relying on us to process a lot of
21 the transactions in the back end. So there is
22 that element, too, that increases the complexity
23 and then that also raises the question of who is
24 responsible for reporting what.

25 MR. MARTLAND: Witnesses, thank you.

1 Mr. Commissioner, that completes my questions
2 for this panel.

3 THE COMMISSIONER: Thank you, Mr. Martland. I'll now
4 call on Ms. Stratton on behalf of the province
5 who has been allocated 15 minutes.

6 MS. STRATTON: Thank you, Mr. Commissioner.

7 **EXAMINATION BY MS. STRATTON:**

8 Q I just have a few questions for these witnesses.
9 Mr. Chhoa I'm going to start with you. You've
10 told the commission about some of the resource
11 challenges faced by small credit unions and how
12 those challenges could be alleviated by using
13 Central 1, but although you could or small
14 credit unions could outsource some of the
15 program development they can't outsource
16 responsibility for money laundering. Is that a
17 fair summary of your evidence?

18 A (EC) That is correct, yes.

19 Q Given these challenges you've identified, are
20 there any tools that you would like to see,
21 either tools that would be useful for a small
22 credit union or tools for some of the regulatory
23 bodies, whether that's BCFSA or FINTRAC or even
24 Central 1? Are there any tools that any of
25 these bodies could have that would assist you in

1 further developing your anti-money laundering
2 program?

3 A (EC) I can't think of any specific tools. I
4 think tools may be in the context of information
5 sharing. You know, I think my colleague
6 referred to the Maxwell report and I fully
7 support that as well so that the findings that
8 were in there. And I think information sharing
9 is a big area of improvement for us, the
10 potential improvement, and if there are tools
11 that can effect that, then that is something
12 that I would certainly be supportive of.

13 Q Thank you. And you said -- do I have this right
14 that you are also the chief privacy officer at
15 your credit union as well as the CAMLO?

16 A (EC) That's correct, yes.

17 Q Do you find that sometimes creates a conflict of
18 interest? You explained that on the one hand
19 with your money laundering hat you sometimes
20 want to share information, but with your privacy
21 hat on you know you can't do that. Does that
22 ever create a conflict for you? And I guess I
23 should add -- pardon me, sorry. Go ahead.

24 A (EC) It creates a challenge, right. So in that
25 particular example that I was thinking of, the

1 way that I resolved it simply was to go back to
2 the client and ask for consent; right? So
3 it's -- is it a challenge? Yes, it absolutely
4 is a challenge, but there are remedies to those
5 challenges. So it's a matter of applying what
6 makes the most sense in that particular instance
7 in order to figure out what the right outcome
8 should be or what the right response or action
9 should be.

10 Q And in your view would it improve your
11 anti-money laundering efforts and those at
12 credit union if the chief privacy officer and
13 the CAMLO were separate people in small credit
14 unions?

15 A (EC) Sorry, could you repeat your question.

16 Q Yeah. Of course. In your view would it improve
17 your anti-money laundering efforts at a small
18 credit union if the person responsible for the
19 anti-money laundering programs or the CAMLO was
20 a separate person from the chief privacy officer
21 so that you're not wrestling with that conflict?
22 I was just wondering your opinion on that.

23 A (EC) I don't believe that that would have a
24 material impact. I think, you know, the
25 organization acts as one and so regardless of

1 that, if that role is held by an individual or
2 two separate people, even if you're two separate
3 people you need to come to an agreement on what
4 the right course of action is. So I don't
5 necessarily believe that having two separate
6 people would be any easier or difficult.

7 Q Thank you. And I just have a few questions for
8 Ms. Herring. My friend asked you about the
9 reporting by credit unions provincial regulatory
10 bodies and you answered that you had very
11 limited reporting to BCFSA, that you had one
12 monthly report you send regarding sanctions. Is
13 that an accurate statement of your evidence?

14 A (LH) Yes.

15 Q I just wanted to clarify one point. Will you
16 agree with me that in the periodic reviews that
17 BCFSA does of credit unions for the regulatory
18 compliance and operational risk that anti-money
19 laundering compliance is a component of that
20 assessment?

21 A (LH) Yes, it is.

22 MS. STRATTON: Thank you, Mr. Commissioner. Those
23 are all my questions for these witnesses.

24 THE COMMISSIONER: Thank you, Ms. Stratton. Now,
25 Mr. Rauch-Davis on behalf of Transparency

1 International Coalition who has been allocated
2 15 minutes.

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

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

5 Q Mr. Chhoa, I'll direct my first questions at you
6 but, Ms. Tolfo and Ms. Herring, if you want to
7 chime in, please do so.

8 So, Mr. Chhoa, I take it you would agree
9 that each year credit unions, including your
10 employer, spend massive amounts of money on
11 their AML regimes.

12 A (EC) Well, massive is a bit of a subjective
13 term, but there is a significant budget
14 allocated to AML activities, yes.

15 Q It's a significant budget. I'm not asking to
16 you go into that budget. I have your evidence
17 that it's a significant budget. And I take it
18 you would agree with me that the impetus as
19 multi -- there are multiple components to the
20 impetus to comply with AML regulations. There's
21 the one aspect which is to comply with the AML
22 regulations, but also of importance is the
23 reputational risk, and by that I mean that
24 public disclosure of credit unions or banks
25 being used to facilitate money laundering is

1 horrible for business; right?

2 A (EC) I agree with that, yes.

3 Q Yeah. And so those are the -- those are more or
4 less the two driving factors behind the budget
5 allocation, the significant budget allocation?

6 A (EC) Yes. Plus it's also the morally right
7 thing to do.

8 Q Sure. I agree with that as well. So I take it
9 you would agree with me that it's in the credit
10 union's economic interests to have an effective
11 AML regime?

12 A (EC) Yes, it is.

13 Q And that includes both within the walls of the
14 credit union and to a larger extent to support
15 Canada's AML regime. You agree with that?

16 A (EC) Yes, I do.

17 Q And so right now there's a pretty heavy onus, or
18 would you agree that right now there's a pretty
19 heavy onus on credit unions and other financial
20 institutions to know your client and do client
21 due diligence and in particular with respect to
22 corporate clients?

23 A (EC) Sorry, can you repeat that again.

24 Q Maybe I'll rephrase it. It's multifaceted. So
25 right now would you agree that there's a heavy

1 onus on credit unions to know their clients and
2 complete their client due diligence?

3 A (EC) Yes. Again "heavy" is a bit of a
4 subjective term, but there's a requirement, the
5 requirement for know your client is multi --
6 like it's used both for anti-money laundering,
7 anti-fraud, but it's also used from a sales
8 perspective as well. And so, you know, we do
9 that as a matter of course from a business
10 perspective.

11 Q And wouldn't you agree that part of the AML
12 budget is allocated to those obligations as
13 well, the know your client, client due diligence
14 obligations?

15 A (EC) Yes.

16 Q And it's costly as well, just those two facets
17 of the AML budget?

18 A (EC) It is, yes.

19 MR. RAUCH-DAVIS: And I'm wondering, Madam Registrar,
20 if a document can be put to the witnesses.
21 COAL00005.

22 Now, Mr. Commissioner, this document was
23 submitted outside of the five-day requirement
24 and so I understand from my friend I will have
25 to seek leave to put it before these witnesses.

1 I am not sure if anyone is objecting, but I
2 though I would raise that issue prior to getting
3 into it.

4 MR. MARTLAND: Mr. Commissioner, I've unmuted not so
5 much with an objection but maybe anticipating.
6 I think it is likely to turn on what question is
7 put or how the document's used. The document
8 was provided -- our rules provide for the
9 requirement that documents to be used in
10 examination or cross-examination be provided
11 five days in advance out of fairness to
12 witnesses who are attending and this was sent
13 yesterday late in the day. I don't know if the
14 witnesses have read it. I won't actually
15 object, though, until I've heard a question
16 because it may be that the document is being
17 used in a way to introduce a topic or sequence
18 out an area of examination that isn't a problem
19 for the witnesses. So maybe I can simply state
20 that and then wait to see what the question is.

21 THE COMMISSIONER: All right.

22 MR. RAUCH-DAVIS: I thank my friend for that
23 clarification. I will just proceed.

24 Q So, Mr. Chhoa, have you seen this document?

25 A (EC) I have seen it but have not read it.

1 there is either no legal obligation on
2 these persons to be truthful when they
3 provide that information, or there is no
4 meaningful legal sanction attached to
5 their false or misleading
6 representations."

7 Do you see that?

8 A (EC) Yes, I do.

9 Q Do you agree with that sentiment that there is
10 no legal obligation on the clients and customers
11 to be truthful?

12 A (EC) Yes, I do.

13 Q And that informs your know your client and
14 client due diligence obligation. Is that your
15 understanding?

16 A (EC) Sorry, that informs my know your client?

17 Q Right. So what I mean --

18 A Can you say that again.

19 Q Yeah, what I mean by that is because you know
20 there's no obligation on the client to be
21 truthful, your organization has to take extra
22 steps to verify the information coming in; isn't
23 that right?

24 A (EC) We do do that, correct.

25 Q So what Mr. Comeau -- I won't take you through

1 this article and I understand you haven't read
2 it, but what Mr. Comeau suggests is this type of
3 declaration of beneficial ownership system in
4 which the onus is shifted from the bank to the
5 client or the consumer to provide truthful
6 information in that the consumer now has an
7 obligation under law with potential sanctions if
8 they are false or if they lie to provide
9 truthful information. And so would you
10 anticipate that that type of system would assist
11 in your know your client or client due diligence
12 obligations?

13 A (EC) Yes. My opinion is that that would be
14 helpful.

15 Q And then on top of that, Mr. Comeau's second
16 suggestion is also the creation and
17 establishment of a public beneficial ownership
18 registry for trust corporations and real estate.
19 Are you familiar with the *LOTA* registry that's
20 coming into effect this year or has come into
21 effect, that's the real estate registry?

22 A (EC) I'm not familiar with the acronym, but I am
23 aware that there is a beneficial ownership
24 registry that is coming into effect, yes.

25 Q And do you anticipate that assisting your

1 obligations under the know your client and
2 client due diligence issues that we were talking
3 about?

4 A (EC) I believe that the beneficial ownership
5 registry will assist our know your client
6 obligations, yes.

7 MR. RAUCH-DAVIS: Thank you. I wonder,
8 Mr. Commissioner, if I could have this exhibit
9 marked, or this article marked.

10 THE COMMISSIONER: Very well. That will be the next
11 exhibit.

12 THE REGISTRAR: Exhibit 453, Mr. Commissioner.

13 THE COMMISSIONER: Thank you.

14 **EXHIBIT 453: Brief of Kevin Comeau to FINA**
15 **Committee respecting proposed changes to**
16 **PCMLTFA, June 12, 2018**

17 MR. RAUCH-DAVIS:

18 Q And, Mr. Chhoa, I take it -- or I have your
19 evidence that typically the information flow
20 from FINTRAC is one way and so if I understand
21 that correctly, it's that you're sending
22 information to FINTRAC and you're not receiving
23 much back unless there's a production order. Do
24 I have that right?

25 A (EC) That's on -- that's correct for day-to-day

1 operational reports. So when we send in large
2 cash transaction reports or large wire
3 transaction reports that is correct, but as I
4 also stated, there is some feedback in terms of
5 when there's an exam FINTRAC will provide
6 feedback to us on how we're doing.

7 Q And how often do those exams happen?

8 A They are at the discretion of FINTRAC. In my
9 experience it's been every couple of years.

10 Q Does FINTRAC provide --

11 A (EC) They're not --

12 Q Pardon me. I didn't mean to interrupt.

13 A (EC) Sorry, I just wanted to clarify that
14 they're not held to two years that that's not --
15 they're able to issue an examination notice as
16 they choose.

17 Q Okay. Does FINTRAC provide guidance on risk
18 assessment?

19 A (EC) In their exams they do.

20 Q What about proactive guidance, like is there
21 anything prior to exams or a mandate to provide
22 information on any type of consistent or regular
23 basis?

24 A (EC) Yes, as my colleague Ms. Tolfo has
25 mentioned, FINTRAC has been fairly proactive in

1 communication with our prudential regulator on
2 many topics amongst which AML is one.

3 Q Thank you. My next question is for Ms. Herring.
4 Thank you, Mr. Chhoa.

5 Ms. Herring, I have a note from your
6 evidence that you have monthly reporting
7 regarding Canadian sanctions and that primary
8 interactions with law enforcement in various
9 jurisdictions, and I take when you refer to
10 various jurisdictions are you referring to other
11 provinces or federal jurisdictions? I just
12 wanted to clarify on that point.

13 A (LH) Yeah, it's a good question. Mainly
14 jurisdictions where we do business I would say
15 is probably the best way to describe that. But
16 when we do have investigations and again just to
17 be clear, it's mainly on the fraud side of
18 things. If it crossed jurisdictional evidence,
19 that needs to be shared or discussed, we will be
20 engaged by other areas, different provinces.

21 Q Okay. Different provinces. Has the United
22 States ever asked for reports to their AML
23 authorities?

24 A (LH) We've dealt with the US Secret Service on
25 several investigations. However, again going

1 back to that it's been mainly fraud related.

2 Q And those are specific investigations I take it?

3 A (LH) Yes, they are.

4 Q Is there any -- let me put it this way: are you
5 aware if there is any reporting obligation to
6 the United States?

7 A (LH) Not that I am aware.

8 Q In your role, and perhaps I'll open this up to
9 the panel, you don't actively report to the
10 United States authorities on their AML regime
11 requirements?

12 A (LH) No.

13 (EC) No, we do not.

14 (ET) No, we do not either.

15 MR. RAUCH-DAVIS: Thank you. Those are my questions
16 for these witnesses.

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

18 Anything arising, Ms. Stratton?

19 MS. STRATTON: Nothing arising. Thank you,
20 Mr. Commissioner.

21 THE COMMISSIONER: Mr. Martland?

22 MR. MARTLAND: No, thank you, Mr. Commissioner.

23 THE COMMISSIONER: Thank you. I would like to thank
24 the panel for taking the time and in sharing
25 their experience and expertise with us in this

Ezekiel Chhoa (for the commission)
Lindzee Herring (for the commission)
Erin Tolfo (for the commission)
Exam by Mr. Rauch-Davis

61

1 area of concern. It's been very helpful and I
2 now excuse you from further attendance at the
3 hearing, virtually of course. Thank you.

4 **(WITNESSES EXCUSED)**

5 THE COMMISSIONER: Mr. Martland, I take it that this
6 is an appropriate time to take a break; is that
7 right?

8 MR. MARTLAND: Yes. My suggestion would be that for
9 benefit of media and the public on the live
10 stream we will be resuming our hearings tomorrow
11 morning at 9:30. We will proceed with the
12 in-camera hearing, and my suggestion would be we
13 might plan to start that at 11:00 a.m. And if
14 we need to hold off the start time by a few
15 moments to make sure everything is ready for it,
16 we'll do so, but that's a separate process for
17 that panel.

18 THE COMMISSIONER: All right. Thank you. We'll
19 stand down until 11:00 a.m. then.

20 THE REGISTRAR: The hearing is stood down until
21 11:00 a.m. Thank you.

22 **(PROCEEDINGS ADJOURNED AT 10:42 A.M.)**

23 **(PROCEEDINGS RECONVENED AT 11:00 A.M.)**

24 **(IN CAMERA UNDER SEPARATE TRANSCRIPT)**

25 THE REGISTRAR: The hearing is adjourned until

Ezekiel Chhoa (for the commission)
Lindzee Herring (for the commission)
Erin Tolfo (for the commission)
Exam by Mr. Rauch-Davis

1 January 20th, 2021 at 9:30 a.m. Thank you.

2 **(WITNESSES EXCUSED)**

3 **(PROCEEDINGS ADJOURNED AT 1:33 P.M. TO JANUARY 20, 2021)**

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25