

**PROCEEDINGS AT HEARING  
OF  
MAY 3, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**May 3, 2021**  
**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 12:00 P.M.)**

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

THE COMMISSIONER: Thank you, Madam Registrar.

Yes, Ms. Latimer.

MS. LATIMER: Yes, Mr. Commissioner. Our next witness is Gary Hughes. And I understand the witness prefers to be sworn, Madam Registrar.

**GARY HUGHES, a witness  
called for the  
commission, sworn.**

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

THE WITNESS: Gary with one R, G-a-r-y, Hughes, H-u-g-h-e-s.

THE REGISTRAR: Thank you.

THE COMMISSIONER: Yes, Ms. Latimer.

MS. LATIMER: Thank you.

**EXAMINATION BY MS. LATIMER:**

Q Good morning, Mr. Hughes. Are you able to hear me okay?

A Yes. That's fine. Thank you.

Q Okay. Thanks.

1 MS. LATIMER: Madam Registrar, may I please have  
2 Mr. Hughes' curriculum vitae displayed, please.

3 Q Sir, do you recognize this as the CV you  
4 provided for use at this commission?

5 A That's right, yes.

6 MS. LATIMER: Mr. Commissioner, may I have this  
7 marked as the next exhibit, please.

8 THE COMMISSIONER: Yes, very well.

9 THE REGISTRAR: Exhibit 952, Mr. Commissioner.

10 THE COMMISSIONER: Thank you.

11 **EXHIBIT 952: Curriculum Vitae of Gary Hughes**

12 MS. LATIMER: Thank you, Madam Registrar. I don't  
13 need that displayed any longer, I don't think.

14 Q Mr. Hughes, by way of overview of your  
15 professional experience, you are a barrister in  
16 New Zealand with 25 years of postadmission  
17 experience; is that correct?

18 A That's right, yes.

19 Q And you have considerable experience and  
20 expertise in dealing with the New Zealand  
21 anti-money laundering and counterterrorist  
22 financing regime; is that right?

23 A Yes.

24 Q Could you tell us a little bit about your  
25 experience in that respect. And I'd ask, if you

1           could, if you could cover everything ranging  
2           from your activities being retained as an expert  
3           to your activities as counsel and your  
4           publications on the issue.

5           A     Right. I guess if I look back over my career  
6           I've mostly done a variety of regulatory work in  
7           one way or another. Sometimes that's  
8           competition laws or antitrust, sometimes that's  
9           other insurance matters. But over the last 10  
10          to 15 years it's really been financial services,  
11          regulatory work and in particular our new  
12          anti-money laundering regime that's grown in my  
13          practice area.

14                 So I first came across this sort of work  
15          when I was a junior lawyer in London, actually,  
16          but upon returning to New Zealand in the  
17          mid-2000s there really wasn't much of a  
18          practice. We had an earlier law that wasn't  
19          really well enforced or well regulated. So I  
20          got in, I suppose, at an early stage when our  
21          government ministries were looking to reform the  
22          law largely due to the urgings of international  
23          pressure from the FATF and others.

24                 And so I was involved in some of the earlier  
25          submissions and thinking around how to frame

1           that statute which came through in 2009. It had  
2           quite a long lead time, so reporting entities  
3           were given a period of time to understand it,  
4           try and implement the compliance processes and  
5           much of my work, I suppose, 2009 to 2013, would  
6           have been assisting the private sector entities  
7           with those sort of issues, statutory  
8           interpretation, process work, how to do a risk  
9           assessment. So fairly advisory based at that  
10          stage.

11                         And then from about 2013, from the period in  
12          which it was implemented, there's obviously been  
13          more work which is my core bread and butter  
14          work, I suppose, of investigations, enforcement  
15          matters and more recently some court work. So,  
16          you know, on any given month the anti-money  
17          laundering might occupy between sort of 60 to  
18          90 percent of my time, and then there's other  
19          different types of regulatory cases like most  
20          practising lawyers would have.

21                         Sorry, I just couldn't hear that.

22          Q         Yeah. You've also involved yourself in some  
23          professional undertakings, including being a  
24          delegate for the New Zealand Law Society to the  
25          Ministry of Justice in its phase 2 law reform

1 expert working group; is that correct?

2 A Yeah, so there were a series of major amendments  
3 to our law in 2017, which we'll no doubt come  
4 back to later. And so there were a number of  
5 technical working groups, I suppose, set up. I  
6 had a couple of roles there. One was for the  
7 Auckland District Law Society, a regional body  
8 assisting with making submissions to the  
9 parliamentary process.

10 And then once the Amendment Act had been  
11 passed, there were a number of delegates asked  
12 to help work through some of the details of  
13 implementation and guidance. And I think it's  
14 fair to say that was a real learning curve for  
15 the regulators as much as the regulated parties  
16 as to how this new system was going to work.

17 Q You've set out a number of publications in your  
18 CV, and the one I was going to highlight for now  
19 is a textbook on anti-money laundering work  
20 flows and that offers guidance to lawyers. Is  
21 that correct?

22 A That's right, yeah. It's a funny thing in the  
23 new world. It's an e-book online through the  
24 Westlaw platform, so I don't even have a hard  
25 copy to wave around. But it's specifically to

1                   assist lawyers, the legal profession, and I  
2                   guess a little bit related accountancy issues in  
3                   the -- with their implementation. So it's very  
4                   much a practical guidebook, and work is underway  
5                   on a more wide-ranging traditional textbook as  
6                   well.

7           Q       Thank you very much. And you were not admitted  
8                   to the bar of any Canadian jurisdiction, and you  
9                   have not worked as a lawyer in Canada; correct?

10          A       That's correct.

11          Q       Okay. You've also prepared an expert report to  
12                   assist in presenting your evidence before the  
13                   commission; is that right?

14          A       Yes, I have.

15          MS. LATIMER: Madam Registrar, may I have, please,  
16                   Mr. Hughes' expert report displayed.

17          Q       Sir, do you recognize this as the expert report  
18                   in question that you prepared to present to this  
19                   commission?

20          A       Yes, that does look like it.

21          MS. LATIMER: Mr. Commissioner, may I have this  
22                   marked as the next exhibit, please.

23          THE COMMISSIONER: Yes, I think we're at 953.

24          THE REGISTRAR: 953.

25                   **EXHIBIT 953: Report to the Commission of Inquiry**

1                   **into Money Laundering in British Columbia,**  
2                   **Canada, by Gary Hughes - April 9, 2021**

3           MS. LATIMER: Thank you.

4           Q     Mr. Hughes, do you have a hard copy of your  
5                   report with you today?

6           A     I do, yes.

7           MS. LATIMER: Okay. I don't need this displayed any  
8                   longer, then, Madam Registrar. Thank you.

9           Q     In broad strokes, sir, in this report you address  
10                  New Zealand's legal and regulatory regime and  
11                  systems that govern its anti-money laundering  
12                  efforts; is that right?

13          A     Yes, that's right.

14          Q     And at paragraph 1.2 of your report on page 5  
15                  you describe the anti-money laundering regime as  
16                  a tripartite system with three interdependent  
17                  elements. Could you explain those three  
18                  elements to the Commissioner, please.

19          A     Sure. I guess I should say that's my personal  
20                  overview of it. I'm not sure if that's in any  
21                  literature. But it's fairly well established,  
22                  at least in New Zealand, that there are three  
23                  parts to this jigsaw puzzle. And to effectively  
24                  counter-audit financial crime you probably  
25                  should address each of them.



1                   The first -- not necessarily in sequence,  
2                   but obviously a key and traditional part of that  
3                   circular process is the criminal laws that deal  
4                   with money laundering, so they are found in our  
5                   *Crimes Act* in New Zealand. So that sets out  
6                   definitions and offences for people dealing with  
7                   or converting the proceeds of crime, and so that  
8                   forms the bedrock of the criminal part of the  
9                   regime and also as a predicate set of offences  
10                  for what is to follow.

11                  What we've built in New Zealand since 2009  
12                  on top of that or next to that is really the  
13                  financial regulatory system, the anti-money  
14                  laundering controls that go along with that. And  
15                  they are in part civil law based and in part  
16                  criminal. But that really is a set of  
17                  obligations and compliance controls imposed upon  
18                  a wide range of sectors in the business  
19                  community, including now professionals. And it  
20                  forces them to apply their own set of mitigating  
21                  steps and controls to try and pick up where the  
22                  actual money laundering might be going on through  
23                  their business or using their services.

24                  So that is the major part of my report and,  
25                  you know, where I predominantly practice and

1           advise and work is the anti-money laundering  
2           controls. And that's really the regulatory part  
3           of the system.

4                     What that does or what that produces largely  
5           by way of output is the next part of the system  
6           and that is the intelligence, the information  
7           from the private sector that the police then use  
8           to go and confiscate and forfeit -- apply for  
9           court orders for forfeiture or restraining orders  
10          over assets that they believe are the proceeds of  
11          crime. And so that's a separate statutory  
12          regime, which we can talk about a little bit  
13          more, really aiming to strip out the profits of  
14          crime from offenders, and that's been very  
15          successful.

16                    And in part that does then provide feedback  
17          to the other aspects of the system sometimes in  
18          terms of better information, better suggestions  
19          for how cases might be run in the money  
20          laundering field or even law reform and  
21          refinements to the anti-money laundering system  
22          as well. So these three parts in my mind are  
23          connected and they do interact with each other.

24          Q        Okay. Thank you. And you set out in your  
25          report that the international participation --

1                   or New Zealand's international participation  
2                   that led to the enactment of this regime in New  
3                   Zealand, including its participation in the  
4                   FATF. I understand that last week New Zealand  
5                   received a new mutual evaluation report. And  
6                   have you had an opportunity to review that new  
7                   mutual evaluation report?

8                   A     Yes, I have. That's -- I don't know if it's  
9                   late breaking news. It's been discussed and  
10                  dealt with at government level for several  
11                  months, but it was only publicly released on  
12                  Friday. So I've had a quick read of that over  
13                  the weekend. I don't think it changes anything  
14                  material in my report. It's mainly -- it's a  
15                  very good, very thorough review of our systems  
16                  and which parts are working well and which parts  
17                  may still contain gaps.

18                 Q     Okay. Excellent. That was my question. It  
19                  doesn't change your opinion as reflected in this  
20                  report?

21                 A     No, that's right.

22                 Q     Okay. Beginning at paragraph 1.22 of your  
23                  report, you describe the formal statutory money  
24                  laundering offences and you set out there some  
25                  of the key elements of that offence beginning at

1 1.24.

2 And I was hoping you could describe for us  
3 the first -- beginning with the first element,  
4 which is dealing with or assisting in dealing  
5 with any property for the purpose of concealing  
6 or enabling another person to conceal the  
7 property. Could you just explain to us the  
8 breadth of the concept of "dealing with" that's  
9 addressed in the statute.

10 A Yes. So the essence of money laundering in  
11 simple terms is a conversion or disguising or  
12 concealing process. And so that could be done  
13 in myriad -- in many different ways, and so the  
14 "dealing with" element is quite a useful and to  
15 my mind quite a broad limb of the defined terms.

16 So in relation to property it talks about  
17 how you might dispose of that, transfer that,  
18 bring it into New Zealand for overseas, remove  
19 it from New Zealand. So there's quite a wide  
20 range of things you can do within the concept of  
21 dealing with something. And property is also  
22 broadly defined. So it's really designed to  
23 catch as many scenarios as you can think of  
24 where you might be transferring, dealing with,  
25 disposing, buying, selling some form of

1 property.

2 Q Okay. The *mens rea* in the offence provision  
3 includes knowing or believing or being reckless  
4 as to whether property is proceeds of crime.  
5 What does the concept of recklessness entail?

6 A That is -- it's not one that's used all that  
7 often, actually, in terms of the cases I see.  
8 An example might be, I suppose, if you have an  
9 associate, a family member or an affiliate of a  
10 criminal and they are benefitting from assets  
11 that have been derived from crime, it might well  
12 be the case that it's more difficult to prove  
13 actual knowledge or intent, but the family  
14 member in most situations might be inferred to  
15 have a pretty good idea as to how that gang or  
16 family or unit has made its money and could be  
17 seen to be proceeding on that basis recklessly  
18 as to whether there was any legitimate form of  
19 income there.

20 So I think it's the standard criminal law  
21 concept of recklessness. I don't understand  
22 there's anything special about that, but it's  
23 verging on the wilful blindness level.

24 Q Okay. At paragraph 1.29 you address the  
25 predicate offences that can form the basis of a

1           separate money laundering offence. Can you  
2           explain the scope of the relevant predicate  
3           offences that are applicable.

4           A    Yes. So it's probably best to start by going  
5           back a little bit in time. So up until 2015 the  
6           predicate offence -- the types of offences were  
7           called serious offences, and that was indicated  
8           to be crimes that could be punishable by up to  
9           five years in prison -- sorry, five years or  
10          more. So at least five years in prison. So it  
11          was intended to target those more serious  
12          offences, and I think consistent with the  
13          underlying intent and purpose that this is  
14          targeted at organized crime and in particular  
15          drug dealing when it first came through.

16                 There was quite a significant change to the  
17          law in 2015 which was to remove the serious  
18          offence element and change that just to any  
19          criminal offence. So that went through and means  
20          that the predicate offences is now a very, very  
21          wide and very deep range of matters. So pretty  
22          much anything that is a criminal offence that  
23          generates a profit or some proceeds now falls  
24          within that. And the law enforcement agencies  
25          and also the reporting entities, the private

1 sector, don't need to think about or worry about  
2 what type of offence, how bad is that in the  
3 scale of classifications or categorizes of  
4 offence.

5 So that's been a remarkable change. And we  
6 are starting to see some interesting things come  
7 through where cases that you may not have seen  
8 five, ten years ago because the focus was on more  
9 hard core organized crime, they're starting to  
10 appear on the radar and people are realizing what  
11 may have been considered less serious offences  
12 are still generating funds and therefore money  
13 laundering.

14 Q Okay. You say later on in your report,  
15 paragraph 2.14, that in many cases proving money  
16 laundering may be easier than proving an  
17 underlying predicate offence, and I'm wondering  
18 if you could explain what accounts for that.

19 A Yes. Perhaps that's more just an observation as  
20 a practitioner, but I guess there's two things.  
21 We are seeing the police units take a lot more  
22 money laundering prosecutions than they used to.  
23 And that would often be only done at the end of  
24 an underlying criminal investigation or once  
25 they had pretty good evidence to show the

1 predicate offence.

2 But I think there's a recognition that it is  
3 a standalone offence and often the elements of  
4 dealing with property with some intention to  
5 conceal or disguise it or convert it, that  
6 extends the net well beyond the primary  
7 offender. And so there may be -- again, taking  
8 that example of affiliates, friends, gang  
9 members, business associates, family members.  
10 There may be a ring of people around the primary  
11 offender who are holding or helping to deal with  
12 assets to put them into some other usable form  
13 so that they look legitimate. And so that focus  
14 on money laundering, there's now a money  
15 laundering unit within the police Financial  
16 Crimes Group, and I think -- whether "easier" is  
17 the right word or at least as good is sometimes  
18 an option for the prosecutor to take a  
19 standalone charge might be the more precise way  
20 to put that.

21 Q Okay. You talk about the Financial Crime Group  
22 beginning at paragraph 2.1 of your report. And  
23 can you describe for us, please, the three arms  
24 of that group?

25 A Yes. So this is a group within the overall New



1                   Zealand Police. We have a fairly unitary  
2                   structure here, so just the one police force  
3                   throughout the country with different obviously  
4                   specialist units and focused teams.

5                   So the Financial Crimes Group is the  
6                   overarching body. The two main parts within  
7                   that were traditionally the financial  
8                   intelligence unit, which is the analysis and  
9                   intelligence team that receives information from  
10                  the private sector in the way of reports from  
11                  reporting entities. And its counterpart was  
12                  originally an asset recovery unit, and so that  
13                  was the unit, originally just one in 2009, which  
14                  was charged with taking the intelligence, taking  
15                  the information and the analysis reports  
16                  produced and then going to turn that into action  
17                  by which I mean executing the operations, taking  
18                  court matters, search warrants, whatever was  
19                  required to begin the process of freezing  
20                  assets.

21                  That asset recovery unit has now expanded  
22                  around the country regionally. It's generally  
23                  been seen to be quite successful, and so there's  
24                  five of them in different centres now. And  
25                  the -- as I mentioned there, the more recent

1            addition is a specialist money laundering unit  
2            alongside those or money laundering team, which I  
3            guess is to focus and zero in on the money  
4            laundering offence in the purest sense in  
5            situations where there may well be other parallel  
6            proceedings or investigations going on into the  
7            predicate offence

8            Q     It's somewhat distinctive to have the Financial  
9            Intelligence Unit within the police structure.  
10           Is that seen as a benefit in the New Zealand  
11           system? And if so, how?

12           A     I think it probably is. If we compare it with  
13           our close neighbour Australia, they have created  
14           a standalone regulator with the financial  
15           intelligence unit inside it that's called  
16           AUSTRAC. We haven't gone down that path. I  
17           think probably at the time because it was more  
18           expedient, we already had a small Financial  
19           Intelligence Unit functioning within the police,  
20           and when the act was expanded, reformed in 2009,  
21           obviously that team and unit would be growing  
22           over time and importance, but there was no  
23           particular need to reconstitute it.

24                      So they continue as a growing force, I  
25           think, within -- inside the police. And it does

1           have a benefit in terms of, as I said, that  
2           dissemination of information and reports. So  
3           they can very speedily interact with all the  
4           different operational units of police regardless  
5           of what the crime is. They can produce the  
6           information, get it to the right person and do  
7           that pretty seamlessly without having to go  
8           through other possible jurisdictional  
9           interagency deals.

10                   Having said that, they also provide a lot of  
11           information to other government agencies, so  
12           there's other specialist groups, you know, for  
13           instance the Serious Fraud Office is a separate  
14           statutory body. There might be other agencies  
15           that -- looking at customs and immigrations  
16           issues, so they will also benefit from those  
17           reports outside of New Zealand Police.

18           Q       Okay. So I take it the intelligence is  
19           available for criminal investigations. Is that  
20           correct?

21           A       That's primarily the purpose of it. And yes, at  
22           that stage as you can imagine there's close  
23           secrecy around it, so there's very little  
24           publicity usually until there's something to say  
25           or a recovery action is instituted or assets are

1 frozen somewhere.

2 Q We're going to come to talk about the asset  
3 recovery teams in more detail in a bit, but I  
4 take it those are also located within the police  
5 structure. Is that right?

6 A That's right, yes. So that's sort of the other  
7 side of the Financial Crimes Group.

8 Q And is the Financial Intelligence Unit's  
9 intelligence available as well for the asset  
10 recovery teams?

11 A Absolutely, yes. I think that's the daily flow  
12 of information.

13 Q Okay. Can you describe, please, what is the  
14 Financial Crime Prevention Network and why that  
15 was formed.

16 A That's a relatively recent institution, and it's  
17 a little bit informal at this stage. I'm not  
18 sure it has any statutory basis to it. The  
19 police created it to enable, I suppose, closer  
20 liaison between the Financial Intelligence Unit  
21 and the main banks, the largest parties who were  
22 providing the bulk of suspicious reports to the  
23 FIU. So I'll just use FIU for Financial  
24 Intelligence Unit.

25 Obviously the process is usually mostly one

1                   way reporting entities provide information to the  
2                   FIU. They will receive and collect data from  
3                   various sources, triangulate that and make it  
4                   useable for police. But of course it can often  
5                   be two-way if the report lands on a hot topic or  
6                   an active investigation, some operation that's  
7                   going on, then the FIU may get in touch with the  
8                   reporting entity and seek more information.

9                   In essence I think the FCPN tries to do that  
10                  in a more regular way by getting together or  
11                  putting out specialized alerts and information  
12                  requests to the large banks effectively seeking  
13                  input they have on the matter of current  
14                  interest.

15                 And, look, I'm not privy to what goes on in  
16                 that group. That's a closely held secret, as it  
17                 should be, but it is modelled on what's called  
18                 the Fintel Alliance in Australia, which is a  
19                 similar process there, I think, of outreach  
20                 between AUSTRAC, their FIU and, again, the  
21                 leading banks or the leading reporting entities.  
22                 So that's become more of a two-way dialogue, at  
23                 least, you know, when there is something to have  
24                 a dialogue about, an active operation or a  
25                 bulletin to send out saying, what do you know

1 about this person or this activity or this asset.

2 Q Okay. Can you describe, please, the National  
3 Organised Crime Group and what role it has in  
4 the anti-money laundering system.

5 A Yes, it's another group, I understand, at  
6 basically the same level as the Financial Crimes  
7 Group. It had an earlier name until about 2017  
8 or 2018 of OFCANZ, the Organised and Financial  
9 Crime Group. I think their focus is really the  
10 hard core organized crime, in particular gang  
11 and drug offence-related things.

12 So we do have the usual sort of problems  
13 here in New Zealand with everything from  
14 motorcycle gangs to drug importation gangs. And  
15 so their focus, I understand, is particularly in  
16 that area. So it might be -- and this is  
17 perhaps putting in informally -- but might be  
18 that their focus remains on the serious offence  
19 level that I talked about earlier, notwithstanding  
20 that the anti-money laundering laws now thrive  
21 off any offence, but that's really a more  
22 specialist group.

23 They do work closely with the Financial  
24 Crimes Group. I'm not sure that they have any  
25 direct statutory role or responsibility under the

1 anti-money laundering regime, which is really the  
2 regulatory system for private sector enterprise.  
3 But they're certainly very active and have a  
4 number of high profile successes, often working  
5 alongside the asset recovery units probably.

6 Q Okay. I wanted to move now to talk with you  
7 about the two phases of reform of the *Financial*  
8 *Transactions Reporting Act*, which -- 1996, which  
9 you described earlier in your testimony as not  
10 particularly -- I think you said not  
11 particularly enforced or a bit light when it was  
12 first introduced. And in your report you talk  
13 about two key phases of reform, the first one  
14 being measures taken between 2009 and 2013.

15 Could you describe in a summary way what  
16 were the significant changes in the phase 1  
17 reforms.

18 A Sure. Sure. Yes, I'm fairly dismissive of that  
19 older statute. It really was not well  
20 understood, even amongst the legal profession  
21 and many people have not heard of it. There  
22 were obligations, say, if they were dealing in  
23 cash above certain levels to consider whether  
24 that was suspicious and make a report. But that  
25 quite frankly that was probably honoured in the

1 breach most of the time.

2 And so for various reasons, although New  
3 Zealand had been a member and a supporter of the  
4 FATF since 1991, our legislative regime was not  
5 up to scratch. And so one of these rounds of  
6 mutual evaluation by the international body was  
7 looming and the ministries here were well aware  
8 that our law was out of date and not very  
9 useful.

10 It proceeded through a series of about three  
11 or four rounds of consultation and discussion  
12 papers over -- stretching over about 2006 to  
13 2009. And the law was eventually passed in a  
14 much reformed and much improved, more toughened  
15 way with our 2009 statute.

16 That -- at the time it was always intended  
17 that it would have eventually a very wide reach  
18 into different types of sectors, including the  
19 professionals, lawyers and accountants and real  
20 estate agents. But something of that scale had  
21 to be broken down, I guess, or tackled in stages.  
22 And so the first part we described as phase 1 was  
23 really to bring in these new regulatory controls  
24 for the core financial businesses. And so that  
25 means banks, life insurers, money lenders, money



1 remitters. Pretty much all of the core financial  
2 players were intended to be captured with that.  
3 And casinos, of which we don't have a great many  
4 in New Zealand. I think there's six.

5 So they were the phase 1 entities, the first  
6 line of business. And the other group, which the  
7 FATF describes as designated non-financial  
8 businesses and professions, it was recognized  
9 that they would come into the regime at some  
10 stage but that was left to be determined a bit  
11 later, and we talk about that as phase 2.

12 Q Okay. And one of the reforms that you talk  
13 about in your report is the requirement to --  
14 for each entity to appoint an individual with  
15 responsibility for managing its anti-money  
16 laundering program. And you make the point that  
17 there's quite a bit of variation and discrepancy  
18 in both the levels of understanding and the  
19 performance of the person in that role, but you  
20 say it's -- nevertheless it's a strength of the  
21 system. Could you explain why that's your view  
22 that that's a strength of the system despite  
23 that discrepancy.

24 A Yeah. I think it's a strength because -- well,  
25 it did a number of things, the law changed, but

1                   two of the very obvious ones where it said  
2                   everybody who's captured every reporting entity  
3                   must have a compliance program. So you actually  
4                   have to turn your mind to documenting your  
5                   processes and thinking about how this will work.

6                   And then it said you have to have a  
7                   compliance officer, a person within the business  
8                   who has responsibility for it. And so it was a  
9                   signal that somebody in the office, in the  
10                  entity, has to take responsibility and oversee  
11                  and manage this program, and maybe that harks  
12                  back to my comment that the earlier law was not  
13                  well understood and hardly ever implemented  
14                  within these businesses. So it was a way of  
15                  ensuring somebody there would be accountable.

16                  And the accountability goes further. So the  
17                  law specifies that the compliance officer must  
18                  report to senior management. So in a company  
19                  that would generally be the board of directors  
20                  or maybe the CEO. And so it was a way of saying  
21                  you can't just hide this responsibility off to a  
22                  junior staff member and forget about it. The  
23                  governance structure and the senior management  
24                  link is important.

25                  Your other part of the question, I guess,

1                   was about variability and what that means. And  
2                   that's just a feature in practice properly. A  
3                   lot like your jurisdiction, we have such a wide  
4                   range of entities from very large banks with  
5                   thousands of employees down to small one- or  
6                   two-man-band companies doing money remittance or  
7                   money lending. And so the requirement to have a  
8                   compliance officer is the same for all of them,  
9                   but obviously the level of resource and ability  
10                  to devote their attention to that can vary  
11                  enormously.

12                  So in a large bank you will have teams of  
13                  people, some with quite specialized functions  
14                  looking at just enhanced due diligence or  
15                  transaction monitoring functions. And then there  
16                  will be obviously an overall compliance officer  
17                  as well. But in very small enterprises that are  
18                  captured, I suppose the compliance burden is  
19                  relatively higher and so you might have that same  
20                  poor individual trying to handle health and  
21                  safety responsibilities and building management  
22                  and maybe financial accounting and also be the  
23                  AML compliance officer.

24                  So it's a question of resourcing and, you  
25                  know, inevitably that leads to variations in

1 practice. But each business is meant to adopt  
2 the -- what FATF call the risk-based approach.  
3 So try to make something that is proportionate  
4 and tailored to the characteristics of your  
5 business at least.

6 Q And one aspect of that approach in the New  
7 Zealand regime is a requirement for the  
8 reporting entities to prepare a detailed risk  
9 assessment document evaluating money laundering  
10 risk. Can you just describe that, what that  
11 entails for us, please.

12 A Yes. So that is something I understand is a  
13 little bit different to other jurisdictions.  
14 Most anti-money laundering systems will in a way  
15 require this risk assessment to be done but not  
16 in such a formal and documented process as we've  
17 gone for. And so it is a risk-based approach  
18 with a number of dimensions to the risk or  
19 different aspects of risk. What we did, which I  
20 think in hindsight has proved quite useful is to  
21 say that in the law, say, the entities must  
22 carry out and perform this risk assessment on  
23 their own business functions and they must do  
24 that before they build the compliance program.  
25 The compliance program and the process is the

1                   procedures they put in place have to tie back  
2                   and be based upon the risk assessment.

3                   So it said do this first and document it,  
4                   have as a written form. You know, effectively I  
5                   tell people it's like a due diligence report on  
6                   your own business, on the vulnerabilities that  
7                   the business may reasonably face or expect to  
8                   face around money laundering or the financing of  
9                   terrorism.

10                  And it's intended to be done, if it's done  
11                  well, in a reasonably detailed fashion. So  
12                  there's a number of statutory parameters or  
13                  dimensions that must be addressed. You have to  
14                  deal with each of them. That includes the  
15                  nature, size and complexity of the business. So  
16                  a description and say that would differ for a  
17                  large bank with offices and branches in almost  
18                  every town with many services and facilities and  
19                  transactional accounts that would differ  
20                  tremendously from a small enterprise that only,  
21                  say, did cash safe deposit box work or something  
22                  like that.

23                  So that nature of the business is important  
24                  and it sets people down a path of trying to  
25                  tailor the risks and thinking about what's

1           relevant to their business as opposed to what  
2           might affect a casino or some other business.  
3           They also must go through the products and  
4           services that are being, been offered, the types  
5           of customers they offer those services to, the  
6           institutions or third parties that they deal with  
7           and the mechanisms or manner by which they  
8           deliver the products and the services and also  
9           the countries that they deal with. So there's a  
10          country or geographic risk assessment in there as  
11          well.

12                   And so the risk assessment, if it's done  
13           well, is quite a detailed document looking and  
14           thinking about each of those aspects. And, you  
15           know, at a simplest level the guidance would  
16           suggest that these entities you sit around,  
17           understand their business because they know it  
18           better than anybody else, not just borrow a  
19           template from somewhere else but really think if  
20           a criminal or a bad guy wanted to use our  
21           services -- hopefully that wouldn't happen, but  
22           if it were to happen, what are the  
23           vulnerabilities, how would they do it, what are  
24           the chinks in our armour, and then document that.

25           Q       Okay. I'm moving to phase 2 of the reforms. I

1 understand that addressed designated  
2 non-financial businesses and professionals.  
3 Could you describe what was going on in phase 2.

4 A Sure. So yes, it's a horrible acronym there.  
5 DNFBP, but effectively in our thinking because  
6 casinos had already been brought in at the early  
7 phase 1 stage, it effectively means the  
8 profession. So lawyers, accountants, real  
9 estate agents and also other brokers or dealers  
10 in the areas that might have been a gap that  
11 weren't previously under the regime. So that  
12 could include, say, art auction houses, dealers  
13 in fine art or luxury motor vehicle dealers. So  
14 they were also to be brought in at that stage.

15 The plans for that had been on the drawing  
16 board for a long time and were probably really  
17 stuck there and unlikely to move very fast. And  
18 incidentally that's still the situation in  
19 Australia. They have plans to bring in a  
20 phase 2 but haven't got there yet.

21 What often happens with these sort of  
22 regulatory reforms is, I guess, in my experience  
23 it needs some crisis or problem to trigger the  
24 necessary parliamentary attention on that.

25 In our case that particular crisis was the

1 release of the Panama papers, the leak of  
2 database information from the Panamanian law firm  
3 Mossack Fonseca. As I'm sure everybody in your  
4 team will know, that firm essentially specialized  
5 in setting up shell companies and trust  
6 structures and other corporate mechanisms and it  
7 would offer those services in a range of tax  
8 friendly jurisdictions.

9 And so the political sort of crisis or  
10 scandal here was the publicity around New Zealand  
11 being used in that way. So our rather  
12 business-friendly regime was open to abuse  
13 through the company system through the use of  
14 trust structures. And so Mossack Fonseca, for  
15 instance, was marketing New Zealand as a  
16 wonderful jurisdiction for these kind of  
17 structures alongside Belize or the Seychelles or  
18 Caymans.

19 So that caused a bit of political fuss and I  
20 guess led to a commission of inquiry, which we  
21 called the Shewan inquiry, but it was an inquiry  
22 focused on the tax aspects, actually, tax evasion  
23 more than money laundering. And one of the  
24 recommendations from that report was that the  
25 country should jolly well get on and do what it



1           said it would do and that's extend the AML regime  
2           to professionals. So that eventually came  
3           through in an amendment act in 2017.

4           Q     You mention in your report at paragraph 3.43  
5           that one key reform was introducing prescribed  
6           transaction reports. Could you just explain why  
7           that was a key reform at phase 2.

8           A     Yes. So it's something that actually applies to  
9           all entities, so it's not really a  
10          phase-2-related thing, not targeted at  
11          professionals as such. But it was an extension  
12          of the phase 1 regime as well.

13                     So the -- up to that point the main  
14          reporting obligation had been upon an entity  
15          feeling there was something suspicious, a  
16          transaction or a matter that was for whatever  
17          reason suspicious and it had obligations to  
18          report that to the police, FIU, in other words in  
19          the same way as your jurisdiction entities would  
20          report to FINTRAC.

21                     So that was all turning upon suspicion. And  
22          the extension to prescribe transactions means  
23          that two types of daily routine transactions need  
24          to be reported as well and that's regardless of  
25          whether there's anything suspicious about them.

1                   So those are known broadly as cash transaction  
2                   reporting, and wire transfer or international  
3                   funds transfer reporting.

4                   So I'm not sure if your jurisdiction has  
5                   those, but a number of other places do.  
6                   Australia has them as well. So the prescribed  
7                   part is just the dollar value. So there's -- and  
8                   that can be changed over time by regulation. So  
9                   certain transactions, say, taking in cash if it's  
10                  over \$10,000 New Zealand, must be reported  
11                  routinely and there's a process and sort of  
12                  batched up for many entities. And so that is a  
13                  different and quite deep vein of information or  
14                  mine of intelligence information that is going to  
15                  police all the time now as well as just things  
16                  that might be triggered by suspicious  
17                  circumstances.

18                 Q    One point you make in your report is that for  
19                     high value asset dealers the suspicious reports  
20                     are voluntary, but the -- do I have it correct  
21                     that the prescribed reports are still mandatory?

22                 A    Yes. Well, not quite. The obligations there  
23                     are a bit looser, but they are -- if, say, it's  
24                     a car dealer dealing in cash above the  
25                     threshold, then you still need to carry out CDD

1                   and consider making that report. So -- sorry,  
2                   I'm dropping in more acronyms. I should have  
3                   explained. CDD for us is customer due  
4                   diligence. The rest of the world knows that  
5                   more often as know your customer, KYC.

6                   So to explain that. If somebody comes to a  
7                   car yard, a dealership and wants to buy a vehicle  
8                   in cash, if it's below the threshold or if it's  
9                   not in cash, then they don't need to go through a  
10                  KYC process with the customer, but if the  
11                  customer wishes to purchase in cash above the  
12                  prescribed amount, then they must do a fairly  
13                  basic level of KYC check and consider whether  
14                  there's anything suspicion about that.

15                  So that's in my mind a pretty low level  
16                  change, but at least a step forward or change  
17                  from the previous situation, which was that those  
18                  entities weren't really covered at all.

19                  Q    Okay. You've described in your report the  
20                  police as the fulcrum to the whole system and  
21                  then there are sort of these three separate  
22                  regulators. Can you explain what you mean by  
23                  the police being the fulcrum and then who are  
24                  the other three regulators and supervisors and  
25                  what are their sort of spheres of authority and

1 functions?

2 A Right. Yeah, fulcrum to me is because the  
3 system is designed to produce information for  
4 police. So there's a clue even in the label  
5 that the businesses get, so they're all  
6 reporting entities. Their function under this  
7 law is to report to the police. And so it is  
8 really designed to drive that flow of  
9 intelligence, that information which can then be  
10 turned into effective law enforcement  
11 operations, and as I say, particularly to feed  
12 the asset recovery unit work.

13 So when I say they're the fulcrum, it  
14 doesn't mean they're the biggest or more active  
15 player, but the system is designed to funnel  
16 that information to them. And so that's the  
17 output. That's the work product, if you like.

18 To run a complex regulatory regime and to  
19 make sure that businesses follow their compliance  
20 obligations, we have three regulators. So  
21 they're described as AML supervisors. Their  
22 function is to supervise and monitor the business  
23 in different fields of the economy, different  
24 sectors. And so they are also the ones that  
25 would take enforcement action if a business was

1 found to be in breach of its anti-money  
2 laundering obligations.

3 So the police focuses on the criminal side  
4 of things, as is appropriate, and for the  
5 regulatory offences or regulatory breaches one of  
6 these three supervisors would deal with that.

7 The three supervisors model has some slight  
8 issues with it, but it was set up at the time  
9 because each of those bodies had at least a  
10 little bit of experience and familiarity with  
11 certain sectors. And so the Department of  
12 Internal Affairs was already involved to some  
13 extent in regulation and control of casinos, and  
14 so it was given responsibility for the gaming  
15 industry that seemed logical.

16 The Reserve Bank of New Zealand, our central  
17 bank, obviously had close relationships with the  
18 banks, it monitored and controlled them for a  
19 whole lot of other prudential supervision  
20 functions as well as life insurers. So they had  
21 to be registered with the bank, and so that was  
22 seen as a natural supervisor for those sectors as  
23 well.

24 Our other main supervisor is the Financial  
25 Markets Authority. That is effectively the

1 securities regulator in New Zealand. And indeed  
2 it was known for many years as the Securities  
3 Commission until it was reconstituted as the  
4 Financial Markets Authority, or FMA. So they  
5 look after a range of financial businesses that  
6 might be brokers, dealers, stockbrokers, exchange  
7 participants, financial advisors. There's a  
8 range of other entities that have to be licensed  
9 with them or supervise them for some other  
10 purpose, and so they were given that set of  
11 businesses.

12 What has happened more recently with the  
13 phase 2 is that the choice was made to get the  
14 Department of Internal Affairs to become the  
15 supervisor for all those entities. And so when  
16 we brought in lawyers and accountants and real  
17 estate agents, I think roughly that led to a  
18 tripling or maybe nearly a quadrupling of the  
19 number of reporting agencies and they were all  
20 given to the Department of Internal Affairs, the  
21 DIA. So that supervisor became overnight by far  
22 the largest in terms of the catchment of entities  
23 and the businesses it needs to supervise.

24 Sorry, that might be more detail than you  
25 needed on that.

1           Q     No, that's very helpful. I was going to ask  
2                   because you described the Department of Internal  
3                   Affairs as the most active in enforcement or  
4                   more active in enforcement than the other two  
5                   supervisors. Is that simply a sort of an  
6                   outcome of having more reporting entities  
7                   reporting to it or is there something else that  
8                   accounts for that greater activity?

9           A     I think that's -- partly the large catchment  
10                  number of entities but also the area that's been  
11                  seen as the most high risk probably of any is  
12                  money remittance, money transfer businesses, and  
13                  they were also given -- in phase 1 given to the  
14                  DIA as its responsibility.

15                         So all of the initial five cases that have  
16                         come through the court system have all been  
17                         focused on the money remitter sector, and so I  
18                         think it's just a reality that you can argue the  
19                         toss. You could say the banking sector is just  
20                         as high risk in some ways, but I think for New  
21                         Zealand money remittance was seen as a top  
22                         vulnerability. And so that's where the early  
23                         cases have focused.

24                                 Each of -- well, the Financial Markets  
25                                 Authority has started an enforcement action, so

1                   they have a court case on foot against a  
2                   derivatives broker dealer company, and I'm not  
3                   sure it's yet confirmed, but the other regulator  
4                   there was -- they were certainly looking at one  
5                   or two actions that might proceed into court as  
6                   well.

7                   Q     The approach to compliance and enforcement, is  
8                   it -- how would you describe that? I take it  
9                   it's not complaints driven.

10                  A     Not -- complaints driven? No, not specifically.  
11                   It's more from proactive monitoring by the  
12                   regulator. And so there's a number of features  
13                   of the system that enable them to do that. They  
14                   have the usual powers you might expect with a  
15                   regulator. They can call for documents, they  
16                   can issue a notice, so they might want to -- and  
17                   they do -- regularly look at an entity's risk  
18                   assessment and its compliance program documents,  
19                   and they will assess and consider whether that's  
20                   good enough and whether the entity seems to be  
21                   meeting the obligations.

22                             And some of those early cases frankly have  
23                   been a business that either didn't understand or  
24                   wilfully ignored the regime and didn't really  
25                   have a functioning compliance program in place.



1           So from a prosecutor point of view they were  
2           probably low hanging fruit cases to take at the  
3           outset.

4           As well as that there's two other parts to  
5           the system. One is an annual report that must be  
6           made by each and every reporting entity to their  
7           supervisor, and that's done through an online  
8           process, a portal. But that is at least an  
9           annual touch point where the supervisor gets  
10          information and feedback about the entities it's  
11          looking after and sometimes that, I guess, can  
12          help them reprioritize what they're looking at.

13          And then the other feature that's  
14          important -- and I'm not sure how widespread this  
15          is elsewhere in other countries -- we have a  
16          requirement for an independent audit to be done,  
17          a statutory audit of the effectiveness, really,  
18          of the risk assessment and compliance program.  
19          Or at least whether it seemed to be meeting the  
20          statutory obligations for those documents.

21          So every two years for most entities that  
22          might change in future to three years, they're  
23          required to find somebody independent. It  
24          doesn't need to be a financial accountant or  
25          anything like that. There's a number of, I



1 instance, from preparing guidance documents that  
2 are to be issued. They will often try and do  
3 that jointly and reach agreement on what's going  
4 to be published, to, you know, also through to  
5 active operations and whether each of the  
6 supervisors has any view or input on something  
7 that's about to be done by one of them in one  
8 particular sector. So that's very regular.

9 There's also on the topic of the sort of  
10 information, there's also what's called a  
11 national coordination committee of the different  
12 agencies that need to be involved in this  
13 process. So that is run by the Ministry of  
14 Justice, the responsible government ministry.  
15 And so that is a more formal mechanism for  
16 getting the supervisors and the police together  
17 on a regular basis, usually with other government  
18 agencies that might have a role to play or a key  
19 interest in that. So that would include the  
20 customs, border protection officials and inland  
21 revenue. So those agencies are not, I suppose,  
22 the core players in the system, but customs, for  
23 instance, has a role in terms of border  
24 declarations for cash transferred in and out of  
25 the country. So that's a little subpart of the

1 act. So they are an agency with a role to play,  
2 and they all need to coordinate and meet  
3 regularly to do that.

4 Q Okay. And then the other one I wanted to ask  
5 you about was initiating and acting on requests  
6 for assistance from overseas counterparts. What  
7 does that have to do with?

8 A Yeah, so that's really a hint at the  
9 international cooperation process that exists.  
10 Mutual legal assistance, I think it's usually  
11 referred to as. So we have a separate statute  
12 that covers the *Mutual Assistance in Criminal*  
13 *Matters Act* that is increasingly, I think, used  
14 and resorted to. And if you're dealing with  
15 financial crime, then it's obviously a regional,  
16 if not a global problem, and these things are  
17 often interconnected.

18 So the usual process of a foreign party --  
19 say if your government, whether that's  
20 provincial or federal, felt there was a person  
21 or an asset of interest in New Zealand, then  
22 there's an official channel where they could  
23 make a request government to government, which  
24 would come into our Attorney General's office, a  
25 request for assistance in New Zealand.



1 counterpart in Australia, known as ASIC, and no  
2 doubt the Canadian equivalent securities  
3 regulator. Same with our reserve bank.

4 And so I think that's probably a hint more  
5 at the ability for that sort of international  
6 communication. As I'm sure some of your other  
7 witnesses may have mentioned, the FIUs around  
8 the world, the Financial Intelligence Unit, also  
9 have their own group, the Egmont Group, which  
10 enables them to liaise and compare notes on all  
11 sorts of matters of interest. So I think that's  
12 probably the indication there about sharing  
13 information.

14 Q Okay. You talk at paragraph 3.55 of your report  
15 about a regulatory pyramid where most compliance  
16 and enforcement is at the low end, like  
17 education and monitoring, but more serious  
18 sanctions are available. And I was hoping you  
19 could just describe for us when you might see  
20 sort of a hardening in the enforcement approach.

21 A Yeah, so I think the pyramid in the literature  
22 traces to a chap called Braithwaite that's sort  
23 of a commonly described regulatory pyramid. But  
24 to me it's also really a sliding scale, which  
25 means in the early stages and for the lowest

1 level of transgression, you would hope most  
2 regulators will take a sensible approach. It's  
3 really a matter of prosecutorial discretion and  
4 commonsense.

5 So they have a range of tools from simple  
6 compliance notices or a letter saying to an  
7 entity hey, your documentation is not good  
8 enough, or you don't seem to have implemented a  
9 process for KYC or CDD, customer due diligence,  
10 or you're not doing it in the right way. So  
11 there's a lot of those sort of letters or  
12 informal points of contact. Sometimes verbally  
13 when the regulators are making an onsite visit.  
14 So giving feedback, nudging an entity to do  
15 their compliance better or differently.

16 That could move through to something that's  
17 for of a formal process like a warning and then  
18 escalate from there to a sanction which might be  
19 either seeking a civil penalty under the civil  
20 enforcement regime or in more serious cases a  
21 criminal penalty and related orders, injunctive  
22 orders, possibly asking the court to ban an  
23 individual from being a reporting entity or a  
24 person from holding a role where they would be a  
25 compliance officer.

1                   So there's a whole range of things in the  
2                   toolkit, and the pyramid idea is that for the  
3                   majority of things that should be dealt with in  
4                   a slightly more softly warning or educational  
5                   approach. That is pretty much what we saw in  
6                   the early stages. So just to set a time frame,  
7                   our law was passed in 2009, as I may have  
8                   mentioned it had quite a long lead time, so it  
9                   didn't come fully into effect until the middle  
10                  of 2013. And then I guess there was something  
11                  of a honeymoon period really where a lot of  
12                  entities were still struggling to understand and  
13                  grapple with the depth of the new obligations.  
14                  The supervisors were realistic about that and  
15                  were, for the most part, working on improving  
16                  compliance and nudging entities along what they  
17                  saw as the right path. And then eventually  
18                  after two or three years of that, there's no  
19                  official or specified period, but for entities  
20                  that weren't getting the message, then  
21                  inevitably some of the more serious tools in the  
22                  regulatory tool kit would come out.

23                  Q     Okay. And you've given us some examples of some  
24                  of the decided cases later on in your report.  
25                  Now, I won't take you through those chapter and



1                   verse, but we have those in your report.

2                   You talk as well about that the law there  
3                   has offence provisions for cross-border  
4                   transportation of cash. Can you tell us what  
5                   those address.

6           A        So -- yeah, so in the old days before COVID when  
7                   we were allowed to travel, everybody entering  
8                   and leaving the country would fill in a  
9                   passenger declaration form, and that would  
10                  include questions on a whole range of things,  
11                  including the amount of cash currency they were  
12                  carrying with them.

13                  If you are minded to move cash, say, for a  
14                  drug ring or criminal enterprise, then, getting  
15                  it in and out of the country, there's often  
16                  attempts made to smuggle cash in, secrete it in  
17                  and out in different ways without declaring it.  
18                  And in fact some of the first cases that were  
19                  brought under our new law were brought by New  
20                  Zealand customs for breaches where people were  
21                  caught at the airport trying to bring in \$400,000  
22                  in cash in their suitcase or around their body  
23                  and not declaring it.

24                  So that's an additional sort of control  
25                  mechanism really for that cash transport. And as

1 I said, it's the customs that has the authority  
2 to enforce that. It's really just around that  
3 border control part.

4 Q Okay. Thank you. I'm turning now to talk about  
5 reporting entities which you address at part 4  
6 of your report. You discuss that reporting  
7 entities are to -- well, you say a key point to  
8 grasp is that what's captured is activity based,  
9 not reporting entity based. Could you explain  
10 what you mean by that.

11 A Yeah. So the activity idea is that the way the  
12 reporting entities are defined -- and, you know,  
13 defining who's in and out of these complex  
14 systems is quite a battle in itself. So a bank  
15 is not a reporting entity simply because it's a  
16 bank; it's a reporting entity because of a range  
17 of services it offers. And in fact banks will  
18 be caught by many of these. So accepting  
19 deposits or funds from the public is an obvious  
20 one. Making loans or transferring money is  
21 another one.

22 So a bank is not in because it's a bank,  
23 it's because it does several of those financial  
24 services. And equally in the way the definitions  
25 work, those services can be interpreted

1 relatively flexibly in some cases. So if you  
2 take modern inventions like cryptocurrency and  
3 electronic payment systems that might not be seen  
4 as too traditional but are now really growing and  
5 well used, so they might come under a concept of  
6 issuing or managing the means of payment or  
7 transferring money or value for customers, so not  
8 necessarily something that is traditional money  
9 or currency.

10 And so by keeping it activity based, it  
11 means you don't have to redesign the labels and  
12 the description of a business all the time; you  
13 focus on the underlying nature of what they do.

14 And the same has applied to phase 2  
15 entities, but it's a little more difficult. But,  
16 again, when we talk about phase 2, say, the legal  
17 profession, a law firm is not covered because  
18 it's a law firm; it's covered because of certain  
19 services that it provides, and those are defined  
20 and specified and they're largely around  
21 transactional services or holding money in trust  
22 account or managing client funds. And so  
23 there's -- there was careful thought given to  
24 which services should be in and which should be  
25 out.



1 settlement to take place of a dispute. And so  
2 those firms have to be a little bit careful that  
3 they're not brought back in just by virtue of one  
4 of those services or functions.

5 But for the most part that was a policy  
6 choice. Although in the international literature  
7 there certainly can be money laundering attempts  
8 through dispute resolution or sham arbitrations,  
9 those sort of things. That was seen, I guess, as  
10 a little bit remote, and so the focus is squarely  
11 on transactional and property-based legal  
12 services

13 Q Okay. And you make the point in your report at  
14 paragraph 4.12 that because the focus is  
15 activity based, there may be some duplication in  
16 reporting activity over, for example, the same  
17 transaction. Is that a drawback of setting the  
18 system up that way to be focused on activity, or  
19 do you see some benefit to that?

20 A I think it is a problem area, but it was set up  
21 presumably with that in mind so as to make sure  
22 there weren't gaps in the information being  
23 captured. To give an example of the duplication  
24 that's often from our customer point of view or  
25 client point of view, so you might have -- in a

1 conveyancing or property transaction, you might  
2 have obviously a lawyer looking at the documents  
3 and advising the clients on that.

4 You might have a real estate agent who is  
5 holding the deposit money in their trust  
6 account, and of course, you know, acting on  
7 aspects of the sale. You may well also have,  
8 depending on the size of it, accounting  
9 advisors. You might have a bank that's lending  
10 money, taking mortgage.

11 And so each of those parties is in a way  
12 dealing often with the same client, the same  
13 customer, but might have to replicate the  
14 customer due diligence on each of those  
15 occasions. And they will do it in their own way  
16 with their own process and hopefully with a  
17 focus on the particular service they're  
18 providing. So the legal service, even though  
19 it's the same transaction, is quite different to  
20 the mortgage lending service.

21 So the intention, I think, was that although  
22 there's an element of duplication, it's perhaps  
23 unavoidable if you want to make sure that each of  
24 those parties still has an obligation to keep an  
25 eye out for what is suspicious to them and then

1                   report it when they see it. So each party might  
2                   be seeing a different part of -- only a slice of  
3                   the jigsaw puzzle, if I can mix my metaphors in  
4                   that way.

5           Q        Okay. At page 26 of your report you set out a  
6                   table of the Department of Internal Affairs'  
7                   perceived inherent risk of anti-money laundering  
8                   and terrorist financing by sector. And I'm just  
9                   wondering if you could briefly explain to us  
10                  what is the concept of inherent risk that's  
11                  being measured here.

12          A        Right. So the table is adopted from the DIA's  
13                   own publication. Each of the supervisors will  
14                   go around and evaluate and risk rate their  
15                   sectors. And as I mentioned, the money  
16                   remittance sector, for instance, is seen as  
17                   being high risk. So that's at the top of the  
18                   chain from the DIA's point of view.

19                                In the course of doing that they also  
20                   produce what's known as a sector risk assessment  
21                   document. And so this gets refreshed and updated  
22                   every few years. That is the regulator's view  
23                   published to their regulated community of where  
24                   they see the risks and the vulnerabilities for  
25                   each of those sectors. And from that they

1           develop their own risk rating of which sectors  
2           are vulnerable and which are less so.

3                   And the individual businesses are meant to  
4           be able to take guidance and take cues from that  
5           as to how they see their business. So it doesn't  
6           automatically mean that every single money  
7           remitter is high risk, but it's an  
8           acknowledgement that their sector is perceived  
9           that way. And so there might be within that a  
10          spectrum of well run, well organized, compliant  
11          money remitters and some that are a much --  
12          highest of the high risk.

13                   The inherent risk idea is -- I suppose the  
14          supervisors' approach to this is to say that the  
15          business should assess its risk of money  
16          laundering activities in a pure sense, in an  
17          inherent sense, as if it did not yet have any  
18          controls and mitigating features in place. And  
19          so when you talk to a company about its risk, it  
20          will be a common response where they say oh,  
21          well, yes, of course theoretically that could  
22          happen, somebody could misuse that, but it would  
23          never happen because we do A, B and C; we have  
24          all these steps in place to prevent it.

25                   So the supervisors ask that businesses look



1 first at the vulnerability in a pure sense, in an  
2 inherent sense and then only later take into  
3 account what mitigating steps they have or will  
4 bring in.

5 It's a little bit of an artificial way of  
6 analyzing it, but it does I guess help entities  
7 focus on the core vulnerabilities and remind them  
8 that this is not just hopefully a tick the box  
9 compliance process but actually it should hark  
10 back to what underlying criminals might actually  
11 do with your system.

12 Q Okay. And you've described in your report that  
13 a firm that sort of just dabbles in a regulated  
14 activity might not be captured and you've talked  
15 about as well the concept of bespoke exemptions  
16 from the anti-money laundering regime.

17 You say that's important to tame the threat  
18 of overreach and inadvertent capture. And I'm  
19 just wondering if you could explain what is the  
20 risk of overreach, and why is that a problem?

21 A It's a problem -- it's an issue when you design  
22 the system, I guess, to be deliberately broad to  
23 catch wide sectors and to describe those sectors  
24 not by a label but by the activity, by the  
25 function or the service they provide. So you

1           have in the definitions very wide concepts. I  
2           mentioned one earlier about issuing or managing  
3           the means of payment. My goodness, what does  
4           that mean; where does that start and where does  
5           that end?

6                         So there's a recognition that at the margins  
7           you're going to catch some entities that maybe  
8           weren't really intended to be within that or  
9           have such a small trivial risk of money  
10          laundering that it's not worth the effort. So  
11          to curb that potential overreach at the margins,  
12          there's a couple of mechanisms. One is the part  
13          of the coverage sections that talks about that  
14          service being carried on or provided in the  
15          ordinary course of business.

16                        So that means if something is done as a  
17          one-off or not necessarily a function that is  
18          regular, recurring, common or promoted as a  
19          feature of the business and they only do it  
20          occasionally, that might not be enough to drag  
21          them into the regulatory net. So there is a bit  
22          of a let-off there if they can show that it's  
23          not in the ordinary course of business.

24                        And, you know, my example earlier for the  
25          lawyers -- you probably recognize that -- in a

1           law firm that only focuses on litigation you  
2           might only once in a blue moon have to the hold  
3           funds in a trust account for a long period of  
4           time, and so you might say well, that's not  
5           something we really want to do or offer as a  
6           service; there was a particular reason, so it's  
7           not in our ordinary course of business to do  
8           that.

9           There's still a lot of grey area around that  
10          and to help close off those uncertainties or  
11          grey areas, firms can apply for an exemption if  
12          they would like a bit more certainty. So  
13          there's a process which can involve entities  
14          trying to get a full exemption or in many cases  
15          just a partial exemption from some of the  
16          obligations. So a number of those have come  
17          through. Something like 80 or 90 over the  
18          course of time. It's a process that's got its  
19          own issues in terms of implementation. It takes  
20          a long time and it's cumbersome. But if a firm  
21          feels it's important enough and wants certainty,  
22          then that option exists.

23          Q    Is it sort of a recognition of the cost of being  
24                regulated in this way for a firm?

25          A    I think that's right, yeah. The compliance cost

1 is considerable, and so if you're only captured  
2 for something that's really just on the  
3 periphery of your business, I suppose in blunt  
4 terms the firm has a couple of choices. They  
5 can opt out of that, cease offering that  
6 particular product or service if it's the only  
7 thing dragging them in, or they could seek an  
8 exemption, try to demonstrate there's a range of  
9 criteria. But they would have to demonstrate  
10 that they're at low risk of being used for money  
11 laundering and that the compliance burden is  
12 disproportionate, that it won't create problems  
13 elsewhere, such as a non-level playing field for  
14 other competitors offering that service.

15 So it might be that that part is worth a try  
16 if businesses find that the degree to which they  
17 have to reorganize, pay for expert help, pay  
18 every couple years for an auditor, that  
19 compliance cost might not be worth it.

20 Q You've talked already a little bit about  
21 customer due diligence. And this is a topic  
22 addressed in some detail in your report. You  
23 set out the sort of minimal and main  
24 requirements for standard customer due  
25 diligence, but what I'm interested in discussing

1                   with you in more detail is the topic of source  
2                   of funds which you address beginning at  
3                   paragraph 440 of your report.

4                   First of all, could you just explain what  
5                   are the key triggers for enhanced customer due  
6                   diligence including source of funds in New  
7                   Zealand?

8           A        Okay. So we have the concept of standard due  
9                   diligence and simplified due diligence and then  
10                  enhanced. Standard is really a reference to the  
11                  ordinary KYC checks -- identity checks for new  
12                  customers. And so that will include things that  
13                  are pretty common around the world really,  
14                  around their name, date of birth, address and  
15                  verify that against some ID verification  
16                  process. So that's standard.

17                  Enhanced is the category where the  
18                  legislation which largely, I expect, the FATF  
19                  recommendations has formed a view or the law says  
20                  these categories are quite likely to be higher  
21                  risk just by virtue of their own characteristics,  
22                  so that includes a customer will be an official  
23                  owner who's acting through a trust structure or a  
24                  vehicle, some corporate vehicle for holding  
25                  assets. That can include a company that has

1           nominee shareholders or shares in bearer form,  
2           which is fairly arcane thing. I'm not sure I've  
3           seen one in 25 years, 20 years now of legal  
4           practice.

5           It can include things that are jurisdiction  
6           based. So a customer from a high-risk  
7           jurisdiction, if they're a non-resident of New  
8           Zealand. So it might be that some of the  
9           triggers are activity, what is the customer  
10          seeking to do. It might be that some are  
11          structural. How are they devising their  
12          transaction or the method they're using for  
13          seeking to do it. It might be some jurisdiction  
14          based, and that includes countries on the list  
15          published by the FATF and other sources, for  
16          instance.

17          A particular one which again is common  
18          around the world is if the customer turns out to  
19          be a politically exposed person, or a PEP. So  
20          that is another trigger for -- maybe to go into  
21          enhanced CDD measures.

22          There's a catch-all as well which is --  
23          harks back to the importance of the risk  
24          assessment. So as well as the circumstances set  
25          out in the statute, it also -- the catch-all

1 covers any other situation that the entity  
2 considers to be high risk or needing enhanced due  
3 diligence. And so when the firm does its risk  
4 assessment and sets out the areas that are low  
5 risk and manageable and the types of customer or  
6 transaction or service which is high risk, then  
7 it needs to come back and pay attention to that  
8 risk assessment again when one of those scenarios  
9 actually arises, when one of those types of  
10 customer walks in the door.

11 And it might be that there's certainly a  
12 level of grey around that, but there will be some  
13 situations that by their own inherent nature or  
14 the nature of the services might trigger a source  
15 of funds or source of wealth inquiry.

16 So that's -- enhanced CDD is really what  
17 categories must you go and do something extra  
18 over and above the basic KYC checks. And what  
19 you must do, the steps you must take vary a  
20 little bit, but they're generally source of  
21 wealth or a source of funds inquiry for the most  
22 part.

23 Q Does the law provide any guidance on when source  
24 of wealth will be sufficient or when source of  
25 funds is required?

1           A     Not -- as is common, not in the law, not in  
2                     statute itself, which just adopts very high  
3                     level principles, almost lifts verbatim from the  
4                     FATF.

5                     So what happens is the regulators, the  
6                     supervisors put out guidance to try and  
7                     elaborate on that and give meaning to their  
8                     reporting community. And so there are -- there  
9                     is guidance on enhanced customer due diligence  
10                    and what these things mean.

11           Q     I just -- you talked about sort of a catch-all  
12                    and I'm looking at the list that you've produced  
13                    at paragraph 4.42 of your report. Is the -- is  
14                    it (d) that is the catch-all? It reads:

15                    "A customer seeks to conduct a complex,  
16                    unusually large transaction or unusual  
17                    pattern of transactions that have no  
18                    apparent or visible economic or lawful  
19                    purpose."

20                    That the --

21           A     No, that's actually a different category. I  
22                    mean, probably what's happened there is the  
23                    report has highlighted some key triggers but not  
24                    the full list from the statute. So the  
25                    reference in the act is actually section 22 of



1           our law.

2                   The one that you mentioned, though, is  
3           certainly an interesting and important one. I  
4           can read to you what -- I could have added -- the  
5           next on from the statute below that is the  
6           catch-all. And it says

7                   "When a reporting entity considers that  
8                   the level of risk involved is such that  
9                   enhanced due diligence should apply to a  
10                  particular situation."

11           So that's really the catch-all at section 22(1)(d).  
12           But the one you've mentioned, which I highlight  
13           in the report, is similar, I guess, because it's  
14           undefined what is complex, which is unusually  
15           large, what is an unusual pattern of  
16           transactions. That's part of this much talked  
17           about risk-based approach that says it's left as  
18           a matter of discretion for each entity to figure  
19           out what that means.

20                   And so for a small business what is an  
21           unusually large transaction is going to vary  
22           considerably from an international bank, what is  
23           a large transaction for them. And so it has to  
24           be a discretionary or sliding scale.

25                   But of course the regulators have some



1                   confusion around modern technology and when,  
2                   say, a biometric element of identification is  
3                   needed. If firms are not meeting customers face  
4                   to face as in increasingly the way in a  
5                   post-COVID environment, how do they apply  
6                   systems around electronic verification, how do  
7                   they assess whether those systems are robust and  
8                   giving them correct verification.

9                   So there's a lot of -- not confusion, but a  
10                  lot of uncertainty or still developing  
11                  through -- working through these issues even at  
12                  a basic level there.

13                 Another one that I think is difficult for  
14                 many entities, apart from maybe the banking  
15                 community, is the obligation separately to  
16                 monitor your accounts and transactions. So once  
17                 you've onboarded a customer and done a KYC check  
18                 on them, you're meant to have an obligation or  
19                 you have an obligation to carry out some sort of  
20                 ongoing work that can be ongoing CDD by way of  
21                 checking and refreshing from time to time that  
22                 those original details are still correct, and you  
23                 also must find a way of monitoring what they do  
24                 with the services in the firm.

25                 So monitoring facilities, accounts,

1 transactions, whatever they do. And that's,  
2 again, there's some guidance on that, but it's  
3 fairly high level and a lot is left to the  
4 consideration of each entity as to what that  
5 means, whether that should be automated as it  
6 frequently is in a bank with lots of clever  
7 software looking out for red flags and unusual  
8 features of all kinds. Or whether that's  
9 something that's a more manual process in a  
10 smaller firm.

11 And so these are issues I think, given our  
12 regime is relatively new, that people are still  
13 working through and the supervisors sometimes  
14 take the view that they can have a lot of sway in  
15 their own interpretation and guidance that they  
16 put out, and sort of force entities to follow  
17 what they consider best practice, but none of  
18 that is often spelled out explicitly in the  
19 statute.

20 Q Is this an issue that is going to be looked at  
21 at the upcoming statutory review? I mean, you  
22 mention in your report sort of variability in  
23 practice across supervisors and the difficulty  
24 in knowing what the law is given that it's  
25 expressed in sort of guidance as opposed to in

1                   statutes. Is that more uniform approached  
2                   something that's going to be looked at in  
3                   upcoming statutory review, do you think?

4           A        Look, it might be. I don't think the  
5                   fundamental approach of issuing lots of guidance  
6                   will change, but in my personal opinion there is  
7                   a need for a bit more effort and consistency.  
8                   What we're really seeing is a tension between at  
9                   one end a very open, entirely risk-based  
10                  approach and something that's more prescriptive  
11                  and more detailed at the other end. And so  
12                  that's -- for every regulatory system I think  
13                  that's a challenge, whether you just set out  
14                  principles and let the parties figure out what  
15                  that means and how to implement it or whether  
16                  you go into a lot more detailed regulation that  
17                  tells them step by step what to do.

18                         We in New Zealand are fairly at the open  
19                         risk-based approach end of things, and so the  
20                         gaps have then been filled by ideas of guidance  
21                         and best practice.

22                         I think many reporting entities would prefer  
23                         more prescription, actually. It would reduce  
24                         costs if there was certainty and they just had a  
25                         rigorous set of details for what to follow. But

1                   that's not consistent with the thrust of the  
2                   FATF approach, which is that it should be risk  
3                   based and carefully tailored.

4           Q       Okay. You talk in part 5 of your report about  
5                   the application of the anti-money laundering  
6                   counterterrorist financing regime to the legal  
7                   profession. Could you just walk us through how  
8                   it is that lawyers came to be brought within the  
9                   system in New Zealand.

10          A       Yes. So I think that harks back to our earlier  
11                   discussion when I mentioned the Panama papers  
12                   and the resulting debate around that. So that  
13                   led to a commission of inquiry or a statutory  
14                   ministerial-level inquiry by an independent tax  
15                   practitioner. And the recommendation was that  
16                   lawyers and accountants should be included in  
17                   the anti-money laundering regime.

18                   That, as I say, had been the case anyway  
19                   that it was always sort of in the background as  
20                   an intention. It moved fairly fast within about  
21                   a year, 18 months from that the amendment act was  
22                   passed. And then that implementation of that  
23                   happened in effectively in three stages, so  
24                   really to stagger the process for the number of  
25                   new reporting entities and for the regulator to

1                   get up to speed and resource to deal with it. So  
2                   they were transitioned, lawyers first, then  
3                   accountants and then real estate agents over a  
4                   course of 12 to 18 months

5           Q       How does the New Zealand regime address the  
6                   topic of solicitor-client privilege?

7           A       That was obviously one of the key concerns, and  
8                   something that had to get a lot of attention.  
9                   It's an obligation that's very closely held and  
10                  very important for lawyers, as you well know,  
11                  and it's an obligation that none of the  
12                  reporting entities, banks or even the other  
13                  professions actually have in the same way. So  
14                  it did mean a need to treat that a little bit  
15                  differently.

16                         A policy decision was made at the outset,  
17                         which I think was quite a sensible one, that  
18                         there wouldn't be really any attempt to abrogate  
19                         or deny a privilege. So legal professional  
20                         privilege remains. And in circumstances where  
21                         something is suspicious, the law firm is  
22                         required to look at it and investigate, but if  
23                         that material or -- if that information is truly  
24                         protected by legal professional privilege, then  
25                         they don't need to include that in a report or

1           make a report about a privileged matter.

2                   What they did at the same time, though, was  
3           to focus more closely in on defining privilege  
4           and to almost -- most importantly spell out what  
5           is not truly privileged information. And so I  
6           think I'd seen examples where many lawyers and  
7           certainly some clients expected that almost every  
8           communication with a lawyer, even on very basic  
9           mechanical pieces of information or even  
10          something like forwarding a non-privileged  
11          document or piece of information to a lawyer,  
12          some people felt that would attract privilege.  
13          And that's not typically been my view or I think  
14          the view of most of our courts.

15                   And so there was an attempt made in the act  
16          to define what privilege is not -- what it is and  
17          what it is not. So that's contained in the  
18          series of provisions around our obligation to  
19          make a suspicious report. And so the key one is  
20          that privileged communications are intact, and  
21          the law firm -- that's overridden by the  
22          suspicious transaction reporting regime, but it  
23          does force them to focus on whether something was  
24          prepared, given to them for a dishonest purpose,  
25          to enable or aid the commission of an offence or





1                   forfeiture or at least a civil restraining  
2                   order, but it's deliberately intended as a  
3                   standalone regime without needing a convention  
4                   to secure the freezing order.

5           Q       Do courts approach the granting of those  
6                   orders -- well, dealing with them one at a  
7                   time -- the restraint orders and then the  
8                   forfeiture orders, in a liberal way or you've  
9                   seen great success for both of those kinds of  
10                  orders in New Zealand?

11          A       Certainly the police -- commissioner of police  
12                   in form but effectively the asset recovery units  
13                   are making great use of that, and I think it's  
14                   generally acknowledged to be very successful.

15                   We mentioned earlier that the FATF report on  
16                   New Zealand's compliance came out last Friday, so  
17                   that's certainly agreed that that's an area we're  
18                   doing well. Those asset recovery units are quite  
19                   high profile and a lot of applications are made.  
20                   So yes, certainly over five to six, seven years  
21                   we've seen a great many more applications coming  
22                   before the courts.

23                   Most of those initiate right at the outset  
24                   as you would expect, I guess, on a without notice  
25                   or *ex parte* basis and they would seek to hold or

1 freeze assets that could be anything from funds  
2 in a bank account to a vehicle or housing,  
3 property, so that it could be frozen and nobody's  
4 able to deal with it in the meantime. That would  
5 then be, as I say, the initial starting point for  
6 either a criminal prosecution because they often  
7 run in tandem, or if they choose not to, then  
8 preparing a forfeiture application to actually  
9 take that freezing restraint a bit further and  
10 say we'd like this confiscated to the Crown.

11 I think the police put out some information  
12 last week around the release of the FATF report.  
13 I understand you might have another witness who  
14 will speak more to that no doubt from New  
15 Zealand. But I think they said something like  
16 over 10 years there's almost a billion dollars in  
17 assets that have been brought under their regime  
18 and something like 25 to 30 percent might now  
19 have reached the forfeiture stage. So the bulk  
20 of that is in restraint mode.

21 The largest ones have been funds or persons  
22 who have come into New Zealand from overseas, so  
23 I think the single largest property forfeiture is  
24 in the order of \$43 million of property assets  
25 from a person who was on one of China's overseas

1 fugitive wanted lists.

2 There's been another significant restraint  
3 order made, I think over \$100 million, from a  
4 potential cryptocurrency fraud where none of the  
5 actors were necessarily in New Zealand, but  
6 that's where a good chunk of the proceeds ended  
7 up. So that money is restrained while New  
8 Zealand and other overseas agencies work through  
9 the rest of the process now.

10 Q Okay. You mentioned that the act allows for  
11 forfeiture of property that is -- in two  
12 circumstances. The first is property derived  
13 directly or indirectly from significant criminal  
14 activity. Is that -- would that be sort of a  
15 tracing regime, then? Is that what that's  
16 describing?

17 A Yes, in a way. So that's usually -- tainted  
18 property is the concept. I'm sure you're  
19 familiar with it. It's defined in different  
20 ways in different countries, but -- so that is  
21 typically looking to find an asset or a property  
22 that can be shown to be derived from criminal  
23 activity. And not even directly, but indirectly  
24 derived is good enough. That's probably the  
25 more common -- not necessarily, but that leads

1                   to a potential order over that particular asset.  
2                   So more of an order focused on those matters.

3                   The -- if the police are unable to ascertain  
4                   a particular piece of property but they believe  
5                   they have sufficient evidence on the balance of  
6                   probabilities standard to show that the person is  
7                   likely to be involved in significant criminal  
8                   activity, then they might just seek a profit  
9                   order which is focused on the likely value of  
10                  derived income. So regardless of how that's held  
11                  or whether it can trace to a particular asset.

12                Q     Okay. That's the second type of property that  
13                  might be covered by the act?

14                A     Yeah, that's right. So that might lead to a  
15                  profit forfeiture order instead. And that could  
16                  say you've got X amount in your bank account; we  
17                  can't show exactly how that's got there or where  
18                  it's come from, but we have evidence that you're  
19                  likely to have benefitted from criminal activity  
20                  to at least that value, and so they might seek  
21                  to secure an order of that nature.

22                Q     Okay. You mention in your report that the act  
23                  only covers significant criminal activity, and  
24                  that's harkening back to that more limited set  
25                  of sort of predicate offences that the old money

1           laundering definition used to cover. Could  
2           you -- do you know why or could you explain why  
3           there's that more limited scope for the asset  
4           recovery regime.

5           A     I think it is -- well, slightly different, but  
6           it does hark back to that concept that it was  
7           meant to be for organized or serious criminal  
8           activity, but the definitions are a little bit  
9           more relaxed than that. So significant criminal  
10          activity -- I may not have put the full  
11          definition in there, but in the act it's got a  
12          couple aspects to it. So one is around the term  
13          of likely punishment, the level of imprisonment  
14          that a particular activity might attract. And  
15          it does talk about activity rather than a  
16          specific offence, so it's not identical with a  
17          predicate offence definition. And so "activity"  
18          might have a slightly more liberal  
19          interpretation.

20                 But there's also another limb around just  
21          the value of what the likely criminal activity  
22          might have generated. And I think that's 30,000  
23          New Zealand, so that's a relatively low  
24          threshold that regardless of the -- the type of  
25          offence and what term of imprisonment it may

1                   lead to.  Simply something that's of more than  
2                   insubstantial value can be targeted.

3                   So it is actually catching a fair range of  
4                   things and the police are making use of that in  
5                   quite liberal terms, I guess.

6           Q        You've mentioned that it's the police -- the  
7                   police in New Zealand who have authority to  
8                   investigate for the purpose of and to seek  
9                   forfeiture or restraint under this piece of  
10                  legislation.  Has there been any concern in New  
11                  Zealand as to whether that would incentivize  
12                  police to use this power rather than the  
13                  criminal law power, or is that of concern there?

14          A        Possibly we're getting to that stage where  
15                   someone might wonder about that.  We previously  
16                   had obviously -- and still have a criminal  
17                   forfeiture regime which can happen at the end of  
18                   the process once there's been a conviction, you  
19                   know, pleading guilty or found guilty.  So that  
20                   still remains and is not infrequently used, but  
21                   I think the police would say they have found  
22                   this to be a very powerful tool at the -- right  
23                   at the outset and to hold assets for the  
24                   duration of however long it's going to take to  
25                   get to the end of the road, whether it's a civil

1 forfeiture or a criminal prosecution.

2 So I think the tendency, the trend has been  
3 to use the civil regime because it's easier, it's  
4 quicker and it's highly visible as well. And so  
5 most of these operations, particularly where  
6 they're against organized crime or drugs or  
7 gangs, there will be significant media attention.  
8 And so, you know, an execution of a warrant on  
9 several properties taking away very expensive  
10 luxury cars, Harley Davidsons, boats, is a  
11 visible sign that the police like to use that  
12 this is deterring and stripping out gang assets.  
13 So they've been very strong on that and I think  
14 it is a successful signalling feature to people  
15 that this act has teeth.

16 At the other end of the scale we're seeing  
17 one or two cases come through which have drifted  
18 away from the original intent of targeting hard  
19 core organized crime to things that -- it's more  
20 arguable or debatable. So one case that's  
21 working its way through actually traces to health  
22 and safety, an employment breach. So a company  
23 alleged and then convicted of running an unsafe  
24 workplace in one respect -- or several respects.

25 There's a case running which tests out



1           really whether the forfeiture regime should apply  
2           to that type of criminal offence. And that is  
3           moving quite some distance, I guess, from, you  
4           know, something that's more core drug or fraud or  
5           obvious burglary sort of related things. So  
6           we're starting to see some cases come through at  
7           the margins which will potentially test out  
8           whether that is an appropriate use of the regime.

9           Q     Okay. In part 7 of your report you discuss some  
10           sort of subsidiary or supporting financial and  
11           corporate regulation and property and asset  
12           investment controls. The first one you talked  
13           about there is the *Financial Service Providers*  
14           *(Registration and Dispute Resolution) Act* and  
15           how that was created in sort of a directory of  
16           financial service businesses. Is that -- can  
17           you explain to the Commissioner what problems  
18           emerged and how those have been addressed?

19           A     Sure. So this -- these features we're talking  
20           about are, I guess, ancillary to the money  
21           laundering regime, but they support my view that  
22           you probably need to think about other policy  
23           levers or areas if you're going to do this  
24           effectively.

25                         So in the earlier years prior to this law,

1           there really wasn't much requirement for  
2           financial businesses to be registered anywhere.  
3           Some of them, if they were in banking or life  
4           insurance or certain specified types of activity,  
5           did need to get a licence or be registered with a  
6           regulator, but for many smaller businesses that  
7           wasn't the case. One of the FATF recommendations  
8           is that there should be a sufficient level of  
9           registration or transparency process so that you  
10          know who in a jurisdiction are providing these  
11          types of services. So this was introduced to  
12          make sure we had a basic level of registration  
13          system.

14                 So that meant everybody from very small  
15          businesses providing credits or money transfer or  
16          other services needed to go on a registration  
17          process. But it's not very onerous, and there's  
18          no -- there was not intended or resource to be  
19          any level of proper scrutiny and supervision. So  
20          it's really like a companies registration  
21          process, financial businesses.

22                 What that led to was people misunderstanding  
23          the purpose of it, I guess, and some companies  
24          wilfully misleading their customers about what it  
25          meant. And so we mentioned earlier New Zealand's

1 quite on open economy. We like to consider  
2 ourselves easy to do business with, so our  
3 company registration and those sort of processes  
4 are fairly easy and quick. Often it's a  
5 transparent online process.

6 Some companies based overseas and without  
7 really any office here or personnel here like the  
8 idea of being New Zealand registered, whatever  
9 that would mean, and they would set up shop and  
10 then market themselves as somehow properly  
11 licensed or regulated and therefore respectable  
12 because they were New Zealand registered. It  
13 became almost like a flag of convenience problem  
14 for some of these businesses.

15 And so one of our regulators, the Financial  
16 Markets Authority, spent a good deal of time  
17 trying to work through those and run some of them  
18 out of the system if they don't really have a  
19 close connection to New Zealand or even a  
20 customer base here. So that's caused a number of  
21 problems really because the system wasn't set up  
22 to be a proper, deep, proactive regulatory  
23 system. Just -- one commentator described it as  
24 a telephone directory system, which I kind of  
25 agree with.

1                   Allied to that -- and this is probably a  
2                   more useful reform -- is the one I mentioned  
3                   there about changing the law to insist that every  
4                   company had at least one local resident director.  
5                   So that wasn't previously the case. You could  
6                   set up a New Zealand company and have an agent or  
7                   address for service that was just a postal box or  
8                   a serviced office with nobody in it. And  
9                   directors and shareholders who were all overseas.  
10                  So that's been changed so that at least there is  
11                  -- for companies and limited partnerships there  
12                  must be at least one resident director. Because  
13                  we have a very close relationship with Australia,  
14                  we also accept a director of a company there. So  
15                  it might be an Australian resident or a New  
16                  Zealand resident.

17                  So that's helped clamp down on that problem.  
18                  It has focused a bit more attention on people who  
19                  may offer their services as a local director for  
20                  hire. And so that's sort of, again, an  
21                  example of how the problem -- when you clamp down  
22                  on one area, sometimes it just shifts to a new  
23                  area. And so the FMAs also brought some  
24                  attention on people who may be working for a  
25                  number of these kind of shelf or overseas

1                   entities again without any real connection or  
2                   customer presence in New Zealand.

3           Q        Okay. And then you describe in your report the  
4                   New Zealand *Overseas Investment Act*. Can you  
5                   talk a little bit about those reforms, what led  
6                   to them and how you say those are connected to  
7                   the anti-money laundering regime.

8           A        Sure. I can. I should say this is not a big  
9                   part of my work but something I do a little bit  
10                  of. And it's again just consistent with the  
11                  idea that anti-money laundering controls on  
12                  their own are only part of the solution and you  
13                  need to look at other legal and economic policy  
14                  controls.

15                         This -- we've always had, since 2005, at  
16                         least, a regime for control of inward  
17                         investments, foreign investment into certain New  
18                         Zealand assets. In the past it was really  
19                         primarily an administrative process, a process of  
20                         going to get approval, presenting some  
21                         information and waiting for an application  
22                         process for approval to buy a piece of land or a  
23                         business or some other asset in New Zealand.

24                                 So there's always been a simple Gateway  
25                                 control. But what happened, as indeed I believe

1           has happened and Sidney and Vancouver and other  
2           places is that -- particularly around a very hot,  
3           maybe overheated property market in those cities,  
4           there's a lot of overseas investment in an open  
5           economy and pressures grow if that market, the  
6           housing market, property market, seemed to be  
7           getting a little bit out of control. And so our  
8           overseas investment thresholds have been  
9           progressively tightened up in a number of ways.  
10          Partly in response to that. Partly because, you  
11          know, overseas investment is a classic case of  
12          sort of national interest and public interest  
13          considerations. So partly it also extends to  
14          things like agricultural, farmland, coastal land,  
15          you know, sensitive investments in those kind of  
16          areas.

17                 So that's taken the form of some changes in  
18          the legal test and threshold and it's also taken  
19          the form of a greater resource and greater  
20          emphasis from the regulator to change them really  
21          from being an administrative function issuing  
22          approvals to much more of what I would call a  
23          proper regulator with enforcement tools and  
24          resources. And they've been much more active in  
25          taking prosecutions, seeking a penalty for

1                   breaches of those inward investment rules or in  
2                   some cases they have the power seek divestiture  
3                   of the asset.

4           Q       Was there a concern that the foreign investment  
5                   was somehow connected to money laundering?

6           A       Yes. It was a part of it, probably not  
7                   necessarily the overriding thing. What the  
8                   public and the media focus on is speculators,  
9                   property being bought and sold, flipped and  
10                  then -- and therefore increasing problems with  
11                  housing affordability as well. So that was  
12                  probably the front end, but within that there  
13                  were certainly concerns at law enforcement level  
14                  around the potential and the ease by which  
15                  property transactions could be subject to money  
16                  laundering.

17                         Anecdotally, you know, certainly there were  
18                         a number of people who would report on a busy  
19                         Auckland property market where houses were easy  
20                         to sell, there was huge demand for them. It  
21                         wouldn't be uncommon for sometimes overseas  
22                         buyers to come up and seek to pay a million  
23                         dollars in cash or more for a property. I don't  
24                         know if that's ever been sort of rigorously  
25                         worked through in evidence, but certainly the

1                   number of anecdotal reports of that suggest it  
2                   was happening.

3                   So that was a focus on people buying in  
4                   cash. The ease at which overseas buyers could  
5                   buy, if not in cash, maybe at an online or  
6                   telephone auction, and whether that was  
7                   speculation or -- you know, investment  
8                   speculators or whether that was an attempt to,  
9                   you know, conceal, disguise, convert some  
10                  overseas proceeds of crime by buying a piece of  
11                  property in New Zealand. It was difficult to  
12                  say, but certainly those fears were raised and  
13                  probably had an element of truth to them.

14                 Q     Okay. The final topic I wanted to address with  
15                   you and which you address in your report centers  
16                   on balancing privacy rights and information  
17                   sharing. You mentioned in your report that  
18                   there are vast rivers of sensitive personal  
19                   information flowing around, and concerns about  
20                   data protection and cyber risks.

21                   And my question -- my first question for you  
22                   is how are reporting entities to balance privacy  
23                   rights and their obligations under the  
24                   anti-money laundering regime?

25                 A     It's not straightforward, I think. And it's



1 not -- it's one of those areas we talked about  
2 that's not spelled out very -- in much detail or  
3 in a very prescriptive way. So entities are  
4 expected to engage in a balancing act, so we  
5 have a privacy statute that was recently  
6 reformed last year, the *Privacy Act 2020*, so  
7 that is a regime for protection of personal  
8 information that agencies and entities hold or  
9 collect or store about their customers.

10 So the balancing act is really how do you  
11 maintain those principles around protecting  
12 private information and manage that with a  
13 system that really pulls you in a different  
14 direction and says, we would like you to ask  
15 your customers for much more information,  
16 collect it from them at the outset, then monitor  
17 what they do and when you find something  
18 suspicious or dodgy, then report that on to the  
19 police. And there's quite hefty sanctions if  
20 you don't follow those compliance obligations or  
21 get it wrong. So you can immediately see the  
22 tension is always there. And I guess it's a  
23 question for any legislative regime or any  
24 country as to where they think that balance  
25 should be drawn.

1                   So the *Privacy Act* obligations still hold  
2                   and that's a standalone separate regime that  
3                   entities are supposed to comply with, and it's  
4                   referenced in a couple of places in our AML act,  
5                   so it is given some special cognizance that it's  
6                   there and the entity should not forget about it.  
7                   But I guess where the rubber hits the road for  
8                   this process. As I mentioned at the end of the  
9                   day, the output, the work product is to make a  
10                  suspicious report when that's necessary and so at  
11                  that point I think the privacy elements are  
12                  overridden by statute and you've got a  
13                  legislative obligation to make that report if the  
14                  threshold arise.

15                  So I guess in terms of the balancing act,  
16                  it's not very well thrashed out and certainly  
17                  this is an evolving space for New Zealand like it  
18                  is for -- in Europe with the GDPR and many other  
19                  jurisdictions. So privacy has to give way at  
20                  some critical points, but it's also given  
21                  recognition when it comes to things like entities  
22                  sharing information under the act.

23                  Q    You've mentioned the *Privacy Act* and the  
24                  anti-money laundering regime, and I'm wondering  
25                  if privacy rights in New Zealand enjoy any

1 higher or special protection, for example, in a  
2 constitutional document or a bill of rights  
3 document or are they protected only by ordinary  
4 statute?

5 A Yes, not any special constitution. So New  
6 Zealand doesn't have a written constitution in  
7 the Canadian or US sense by which the courts can  
8 strike down an act of parliament. So we do have  
9 a *Bill of Rights Act*, which is an ordinary  
10 statute, albeit passed by entrenched majority,  
11 and the courts have given that a special meaning  
12 but it doesn't include a specific right to  
13 privacy as such. It includes a whole range of  
14 other human rights, as you would expect to see.  
15 Freedom of expression, freedom of association,  
16 all those things.

17 But privacy is being left to be developed  
18 partly under the standalone *Privacy Act* for  
19 protection of personal information and partly in  
20 a piecemeal way with common law development,  
21 such as around using a law of tort to protect  
22 against certain invasions of privacy. So  
23 that's a piecemeal thing and doesn't refer to  
24 any higher constitutional authority in our  
25 country.

1           Q     Okay.  And you talk in your report about the  
2                     role of New Zealand's privacy regulator.  And  
3                     could you describe, please, what that role is in  
4                     respect of the anti-money laundering regime in  
5                     particular.

6           A     Yes.  So the anti-money laundering is only a  
7                     tiny touch point, I think, for the office of the  
8                     privacy commissioner.  So their job is to  
9                     administer the *Privacy Act*, to deal with what is  
10                    now known as mandatory data breach notification.  
11                    So if a company loses information about  
12                    customers or is hacked, then it may have  
13                    obligations to tell the affected parties and to  
14                    notify the regulator, the privacy commissioner.  
15                    So that's the mainstay of what that office does  
16                    as well as investigate complaints and cases  
17                    around breaches of privacy.

18                             Obviously as part of that this anti-money  
19                             laundering regime has come onto the radar of the  
20                             privacy commissioner and in a couple of places in  
21                             the AML act the privacy commissioner was given  
22                             recognition that that office should be consulted  
23                             before certain things are done or certain pieces  
24                             of guidance are put out.  So the privacy  
25                             commissioner has a role as an interested party

1                   and another government agency to have input but  
2                   otherwise doesn't specifically have a role in the  
3                   administration of the regime. We have a privacy  
4                   commissioner at the moment, the incumbent, who is  
5                   very good at outreach and education and has a  
6                   good high profile.

7                   And so he has spent some time reminding  
8                   reporting entities that privacy obligations still  
9                   exist, and they can't simply forget about them  
10                  even though they're being told to collect and  
11                  store a lot more data about everybody they can  
12                  think of these days under the anti-money  
13                  laundering regime.

14                 Q    Okay. My last question for you is just in a  
15                     summary way -- we've covered a lot of ground  
16                     this morning, but in a summary way could you  
17                     tell the Commissioner where it is that you think  
18                     is working particularly well in the New Zealand  
19                     system and what, if any, are some of the issues  
20                     deserving maybe closer attention during the  
21                     forthcoming statutory review process or  
22                     otherwise.

23                 A    Yes. Look, that's a big question and so I won't  
24                     attempt any sort of grand summary. I think the  
25                     reflections that have just come through in the

1                   FATF evaluation of New Zealand are mostly sound,  
2                   so they suggest we're doing a much better job  
3                   than we were five, ten years ago under the old  
4                   laws, and that it has been seen as an  
5                   improvement to bring the professionals under the  
6                   banner who have now been captured. So all that  
7                   is seen as a strong point or a pass mark in the  
8                   international evaluation system.

9                   And the asset recovery function, the  
10                  criminal proceeds recovery, I think, is seen  
11                  pretty much universally as being successful and  
12                  that the regime is delivering the right  
13                  information to enable those highly visible  
14                  operations to take place at the police end. So  
15                  that's generally seen as a good thing.

16                 From the compliance community, you know, the  
17                 private sector where I suppose most of my work as  
18                 a practising lawyer would be, there are a number  
19                 of concerns still and the regime's in its early days  
20                 but we do need to work through how to address  
21                 better the complexity of the law and the  
22                 compliance cost or uncertainty that bringing as  
23                 we discussed many of those grey areas because the  
24                 statute is very high principles. Many are left  
25                 to be filled by guidance or a regulator's

1 particular interpretation on something. And that  
2 isn't the same as a clear level of legislative or  
3 regulated prescription, which many entities would  
4 like. So that sort of compliance cost, what that  
5 leads to, that is a challenge.

6 We also have some issues, I think, around  
7 consistency with different agencies, three  
8 regulators, each looking after different sectors  
9 with their own views on things. We're not as bad  
10 as England, but I think there's something like 17  
11 different agencies across different sectors in  
12 the UK. But for a country of our size, it's  
13 questionable whether we need all three to be  
14 doing those things. And then they spend a lot of  
15 time and effort having to coordinate to stay on  
16 the same page.

17 And I think the things we mentioned around  
18 enhanced due diligence. There's -- it's  
19 recognized that there's a lot of trust structures  
20 in New Zealand. It's quite prevalent through  
21 different parts of our economy, so the FATF has  
22 commented on that and that we don't have too many  
23 formal beneficial ownership registers, public  
24 registers or law enforcement registers of the  
25 kinds that you're seeing overseas now taking

1 hold.

2 So those areas along with the privacy, how  
3 we balance that information regime and the  
4 tension between, I guess, a law enforcement  
5 system that would like ever-increasing amounts of  
6 data and uses it for good purpose generally to,  
7 as I say, take the criminal assets out of the  
8 community or out of the hands of criminals. But  
9 how you balance that with the individual  
10 considerations is still to be worked through, but  
11 more in detail.

12 So I think, you know, it's not for me to  
13 offer too many suggestions, but I think our  
14 system has come a long way in 10 years. I think  
15 generally it's successful. I think it's  
16 certainly made good inroads into what was a  
17 poorly regulated or not very well enforced area  
18 in the past. And sometimes the visibility and  
19 the signalling effect of that is just as powerful  
20 as the actual on the ground enforcement in terms  
21 of if you have a goal of deterring criminals from  
22 seeing New Zealand as an easy place to do  
23 business or a soft touch for this sort of thing.  
24 But certainly how you manage that with the  
25 complexity and compliance cost is going to loom



1 as an ever bigger issue.

2 MS. LATIMER: Thank you very much. Mr. Commissioner,  
3 those are all my questions. And I suggest it  
4 might be an appropriate time for the morning  
5 break.

6 THE COMMISSIONER: I think it's even afternoon break  
7 at this point, Ms. Latimer, but yes, I agree  
8 with you. We'll take 15 minutes.

9 THE REGISTRAR: This hearing is adjourned for a  
10 15-minute recess until 2:15 p.m.

11 **(WITNESS STOOD DOWN)**

12 **(PROCEEDINGS ADJOURNED AT 2:00 P.M.)**

13 **(PROCEEDINGS RECONVENED AT 2:14 P.M.)**

14 **GARY HUGHES, a witness**  
15 **for the commission,**  
16 **recalled.**

17 THE REGISTRAR: Thank you for waiting. The hearing  
18 is resumed. Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Madam Registrar.

20 Yes, I'll now call on Ms. Stratton on behalf  
21 of the Province, who has been allocated 10  
22 minutes

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

24 **EXAMINATION BY MS. STRATTON:**

25 Q Mr. Hughes, can you hear me all right?

1                   Mr. Hughes, can you hear me all right?

2           A        I can, yes. Is my audio working?

3           Q        Yes, it is. And I'm not sure if you missed what  
4                   Mr. Commissioner said, but I'm counsel on behalf  
5                   of the Province.

6           A        Sorry. I did miss that, but that's fine.

7           Q        Great. I just have a few areas of questions for  
8                   you. First I wanted to start -- on page 26 and  
9                   27 of your report you discuss the inherent risk  
10                  assessment and Ms. Latimer asked you about this  
11                  as well. And I believe you told Ms. Latimer  
12                  that the inherent risk assessment is an  
13                  assessment of the risks or the vulnerability in  
14                  each sector without taking into account  
15                  anti-money laundering controls that that sector  
16                  might have. Is that an accurate summary?

17          A        Yes, that's how the supervisors would like it to  
18                  be approached.

19          Q        On page 27 of your report the casino sector is  
20                  classified as medium to high risk, and I was  
21                  wondering if you know what factors or  
22                  characteristics of the casino industry this  
23                  assessment is based on.

24          A        Each of those sectors has a small section and  
25                  another document put out by the supervisor

1           called a sector risk assessment. So they go  
2           through and talk about contextual features that  
3           might range from how many businesses are in a  
4           particular sector down to a more granular level  
5           around how well regulated they are for other  
6           purposes and how frequent it is that criminals  
7           might resort to their activities and services.

8           So the supervisor, the regulator, is  
9           weighing up a range of things at quite a high  
10          level. I don't have that in front of me, but I  
11          could certainly come back to you if that was  
12          important on what those features would be. They  
13          would include, say, for a casino the prevalence  
14          of business that might be going through there in  
15          cash, being typically cash intensive businesses  
16          would be one feature that might make them more  
17          risky. Balanced against that is the fact that  
18          the industry here, as no doubt in your country,  
19          is regulated for gaming purposes, holds a  
20          licence. So that might be a feature that means  
21          there is at least some other level of control in  
22          there. So it would be a weighing-up process of a  
23          range of factors like that.

24          Q       Okay. And these are all risks that are inherent  
25          to the sector but then they're later mitigated

1                   or reduced through the anti-money laundering  
2                   controls; is that right?

3           A       Yeah.  And that's -- the later processes, each  
4                   entity then -- having thought about its own  
5                   level of risk, then going to put in place some  
6                   controls and procedures, a compliance program to  
7                   try and deal with that.  So that leads to our  
8                   later, you know, residual level of risk once  
9                   you've got some controls.  And as I said, I'm  
10                  not sure it's a terribly helpful way to analyze  
11                  it, but it's how our regulators prefer to  
12                  approach it here.

13          Q       Okay.  Thank you.  That's helpful.  I'd like to  
14                   switch gears and ask you a little bit about New  
15                   Zealand's asset recovery process.  And in  
16                   particular I'm interested in how the asset  
17                   recovery units are located within the police.

18                         So how -- do you have any awareness of how  
19                   it is that police identify files for asset  
20                   recovery?  Are they identified by the FIU?  Are  
21                   they identified by investigators investigating  
22                   criminal matters?  Are they identified by the  
23                   asset recovery units themselves or some  
24                   combination of all of those?

25          A       I would think probably a combination of all of

1           those. I understand there's a New Zealand  
2           senior police witness scheduled in a few days.  
3           He's probably better placed to answer that. But  
4           certainly a majority, if not nearly all of those  
5           big operations, would also include some private  
6           sector suspicious information reports in there  
7           as well.

8           Q     Okay. Thank you. And on page 37 of your report  
9           you talk about the investigative powers that  
10          police officers have under the asset recovery  
11          statute. And those include the powers, you say,  
12          to obtain search warrants, obtain production  
13          order, obtain witness examination orders.

14                 Do you have any insight into how important  
15          these powers had been to the asset forfeiture  
16          units or how often they use these powers?

17          A     I think there has been quite a lot of resort to  
18          those powers to get the material that the  
19          commissioner of police needs to go and seek a  
20          without-note freezing order at the outset. I  
21          described earlier how that would often be the  
22          first step in the process. So that needs to be  
23          backed by some information, obviously. In  
24          affidavit form usually at that stage.

25                 Typically that might include going to banks

1                   and getting them to produce bank account records  
2                   or other entities, if they have some  
3                   information, so that you can get a prima facie  
4                   case as to why an urgent restraining order is  
5                   needed over that property. So I don't have any  
6                   insight as to statistics or how often the police  
7                   resort to that, but that would be an example of  
8                   the type of thing where they would be ready to  
9                   go to court with the evidential platform to make  
10                  the application.

11                Q     And do you know -- and I appreciate, now I'm  
12                    asking these questions, they might be better  
13                    posed to the witnesses next week from the New  
14                    Zealand Police, but do you have any idea if the  
15                    powers are used to identify files to pursue or  
16                    if they're more used in a later stage once sort  
17                    of an investigation is identified to move the  
18                    file along?

19                A     I would think -- from the outside I would think  
20                    that they're also used at the earlier  
21                    investigative stage, and so, you know, there  
22                    would be a process that runs internally  
23                    ascertaining -- well, assuming there's some  
24                    basis for significant criminal activity, then  
25                    ascertaining what assets does that person hold.

1                   That could be through traditional police  
2                   investigation and internal methods, but it might  
3                   also be supplemented by some form of information  
4                   from reporting entities.

5           MS. STRATTON: Thank you. Madam Registrar, if we  
6                   could -- if I could please have up page 10 of  
7                   the report down towards the bottom.

8           Q       Or I suppose if you have a hard copy,  
9                   Mr. Hughes, that will work as well.

10          A       Yeah. Have you got a paragraph reference? On  
11                   the left there's paragraph numbers.

12          Q       I should have that, shouldn't I? Yes, it's 2.9.

13          A       Thank you.

14          Q       So you say:

15                   "The FIU grew considerably in prominence  
16                   after the *MLCFT Act* became law in October  
17                   2009 from a small and rather insular part  
18                   of the broad police organization. As a  
19                   result of new staffing, financial  
20                   resourcing and analytical tools  
21                   investment, it now plays a more public  
22                   role to assist in detecting and deterring  
23                   money laundering."

24                   And I was just wondering about the reference to  
25                   analytical tools. Do you have any knowledge of

1                    what those analytical tools are that help the FIU  
2                    with its work?

3                    A     That probably is a specific question for the  
4                    other witness. From my understanding from the  
5                    outside there's been heavy investment in  
6                    software, and you can imagine after 2017 when I  
7                    mentioned there was a whole new range of reports  
8                    needed, not just based on suspicious but just  
9                    based on cash thresholds or international wire  
10                   transfer thresholds. So there's more data to  
11                   manage and how they analyze that I think is --  
12                   increasingly needs some software and some  
13                   automation behind it, but I can't tell you what  
14                   those tools are and I've not sure they've  
15                   publicly been disclosed.

16                   MS. STRATTON: Okay. Thank you. Those are all my  
17                   questions, Mr. Commissioner.

18                   THE COMMISSIONER: Thank you, Ms. Stratton.

19                                      I'll now call on Ms. Herbst on behalf of the  
20                                      Law Society of British Columbia, who has been  
21                                      allocated 10 minutes.

22                   MS. HERBST: Thank you, Mr. Commissioner.

23                   **EXAMINATION BY MS. HERBST:**

24                   Q     And thank you, Mr. Hughes. I just have a few  
25                   questions about some points of New Zealand law



1           that might not that might not be that intuitive  
2           to us in British Columbia, but I should just  
3           emphasize it's a few questions because  
4           Ms. Latimer and yourself have covered off a lot  
5           of the points.

6                        So the first area I wanted to touch on is an  
7           area that I know you said wasn't central to your  
8           work, but it's *The Overseas Investment Act* of  
9           2005 in New Zealand. And in particular a comment  
10          you have in your report about it now being  
11          extremely difficult for a non-resident of New  
12          Zealand to buy a pre-existing New Zealand house.  
13          Is that -- my understanding is that under the  
14          statute there is a concept of sensitive assets.  
15          Is residential property a sensitive asset in the  
16          statute?

17          A        I think that's a separate category for sensitive  
18          assets. So effectively the threshold's a bit  
19          broader than that. And as we discussed, I  
20          guess, the media attention or the publicity has  
21          really been around housing markets. But a  
22          sensitive asset might include -- it could be an  
23          economic asset or more often it might be a piece  
24          of land that's got some cultural or historic  
25          significance or near the beach or a lake or a

1 coastal area.

2 Q Okay. And you had mentioned when discussing  
3 this with Ms. Latimer that some of the  
4 thresholds had tightened. Are there certain  
5 thresholds for approval, then, of purchase of  
6 pre-existing houses that have tightened over the  
7 years?

8 A There are. And that's -- I can't claim to be  
9 right up to date with that because there's been,  
10 even since the COVID situation, two or three  
11 fairly rushed sets of legislative reform. So  
12 that's a moving feast, actually, but they have  
13 been progressively tightened, certainly.

14 Q Okay. Now, just in terms of organization of the  
15 legal profession, I understand that in New  
16 Zealand, like in Canada, lawyers originally  
17 qualify or start by qualifying as both barrister  
18 and solicitor.

19 A That's right, yeah.

20 Q But I understand that in New Zealand, unlike in  
21 British Columbia, there's a potential to move to  
22 a different status called barrister sole.

23 A Yes. Yep. So that's what I -- that's my status  
24 now in terms of practising certificate. It's --  
25 I suppose the tradition here is for lawyers that

1           have spent some time as litigation lawyers in a  
2           firm, maybe at a more senior level of their  
3           career they might move to focus just as a  
4           barrister, so ...

5           Q     And I understand there are some constraints on  
6           your practice as barrister sole that you can no  
7           longer practice as a solicitor in that role.

8           A     That's right. And so that includes obvious  
9           things. Barristers don't have a trust account,  
10          so they're not typically doing commercial  
11          transactions, although there are some barristers  
12          that just focus on advisory work, which is known  
13          colloquially as a commercial barrister.

14          Q     Okay. And I understand it's a bit of a mix in  
15          terms of when you can take instructions directly  
16          from clients and when you need an instructing  
17          solicitor. Is there -- are there some facets of  
18          your practice where you do one or the other?

19          A     That's right. So that was -- those rules  
20          previously known as the Intervention Rule were  
21          relaxed in about 2016, I think. 2015. So in  
22          certain situations outside of proceedings, so  
23          that would cover anything from an opinion advice  
24          to maybe attending a mediation. That could be  
25          done on direct instruction without the need for

1 an instructing solicitor if several tests are  
2 met and the primary one is that it's in the  
3 interests of the client, it will benefit them.

4 Q Okay. And just on -- last point about barrister  
5 sole. Do I understand correctly that barrister  
6 sole can't be part of a partnership or a law  
7 firm, that it's a different category?

8 A That's correct, yeah. So it's truly an  
9 independent role still here, which is perhaps  
10 one of the attractions of it, but we do  
11 congregate together in chambers, which is where  
12 I'm at here as well.

13 Q Got it. Okay. And then just a few questions  
14 about your court structure. And I appreciate  
15 this may sound obvious, but I just wanted to  
16 make sure I understood the parallel to the  
17 extent they exist or differences.

18 A Of course, yeah.

19 Q So is your highest court the Supreme Court in  
20 New Zealand?

21 A That's correct, yes.

22 Q And was that established around 2004?

23 A That sound about right, yes. Prior to that we  
24 had resort to the Privy Council in England as  
25 our final court of appeal.

1           Q     And I think this arises or -- arises out of a  
2                   discussion that you and Ms. Latimer had a bit  
3                   earlier. But I wasn't able to find any record  
4                   of constitutional challenges to the *Anti-Money*  
5                   *Laundering Counter & Financing of Terrorism Act*.  
6                   Can you confirm -- and that may arise just -

7           A     That's correct, I'm not aware of any. And we  
8                   don't have an entrenched written constitution to  
9                   point to in that sense either. We have a  
10                  process where a new law that's coming before  
11                  parliament, the Attorney General has  
12                  responsibility to assess it and comment in  
13                  parliament as to whether it may be at risk of  
14                  breaching the *Bill of Rights Act*. And so there  
15                  would have been some advice given or considered  
16                  at least at those points in time in 2009 and  
17                  again in 2017, but not such to lead to a court  
18                  or constitutional challenge, no.

19          Q     Okay. And I think this point is very much  
20                  aligned with -- you had commented before on the  
21                  New Zealand Police structure and the unitary  
22                  nature of it, although of course it has  
23                  different offices and roles within it. I think  
24                  this is obvious, but likewise, New Zealand is  
25                  not a federal country; it's only got a central

1                   government and then local governments, not  
2                   provincial or state?

3           A       That's right, yeah. We don't have a state or  
4                   federal divide. So that's one complication  
5                   we're happy to leave to the Australians and  
6                   others.

7           MS. HERBST: Excellent. Well, thank you very much.

8                   Those are my questions. Thank you.

9           THE WITNESS: Thank you.

10          THE COMMISSIONER: Thank you Ms. Herbst.

11                   I'll call now on Mr. Usher on behalf of the  
12                   Society of Notaries Public of British Columbia,  
13                   who has been allocated 10 minutes.

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

15                   **EXAMINATION BY MR. USHER:**

16          Q       Mr. Hughes, I represent the Society of Notaries  
17                   Public of BC. In some ways we're similar to  
18                   your New Zealand Society of Conveyancers in that  
19                   our members do real estate transactions. And  
20                   I've got questions just to make sure I really  
21                   understand the distinctions between our legal  
22                   world and yours.

23                   We've just heard a couple of them. So, for  
24                   example, we talked about the *Overseas Investment*  
25                   Act. You mentioned earlier that your company act

1                   now requires a local director. Is that the case?

2           A       That's right. Or an equivalent director of an  
3                   Australian company.

4           Q       Right. And that's, again, one place you're a  
5                   bit different than us.

6                   And in terms of licensed conveyancers, do  
7                   you know how many licensed conveyancers there  
8                   are in New Zealand?

9           A       I don't off the top of my head. Not a great  
10                   many is my assumption, but I could find that  
11                   information if it's relevant. I mean, I think  
12                   we've got something over 13,000 registered  
13                   lawyers, so my guess would be maybe only a  
14                   thousand or so probably. But I'd have to check  
15                   that information.

16          Q       Thank you. And I take it would it be a normal  
17                   practice in New Zealand to have a lawyer on one  
18                   side of, say, a residential real estate  
19                   transaction and a licensed conveyancer on the  
20                   other?

21          A       Sometimes. Or two lawyers, different law firms.  
22                   Yes, it will pop up from time to time. I'm not  
23                   sure how -- what proportion of those would have  
24                   a registered conveyancer.

25          Q       And are there any significant different

1 anti-money laundering rules that apply to  
2 lawyers and licensed conveyancers? Are they  
3 essentially the same regime?

4 A Yes, I think they're essentially treated alike  
5 and that is partly because -- you might recall I  
6 mentioned earlier that the test for whether  
7 you're covered or not is really an  
8 activity-based test. So if you're providing  
9 real estate services of different kinds, it  
10 doesn't matter whether you're the real estate  
11 agent or the lawyer or the conveyancer, it's the  
12 type of service you're offering that brings you  
13 in.

14 Q All right. Thank you. Now, both of our places,  
15 New Zealand and British Columbia, have  
16 Torrens-style land systems, but I note that your  
17 New Zealand *Land Transfer Act* forbids  
18 registration or placement of any notice of a  
19 trust on title. Is that something you're aware  
20 of?

21 A I was vaguely aware of that. I've never really  
22 had cause to look at it or I'm not sure of the  
23 genesis of that.

24 Q Yes, that seems to be something that may be  
25 different from British Columbia. We have heard



1                   at these hearings a number of people commenting  
2                   on prosecutions and disclosure. Now, you  
3                   mentioned that you've got a bill of rights in  
4                   New Zealand. Is that the case?

5           A       Yes, the *Bill of Rights Act* 1990. It's a  
6                   regular statute, but given, I guess, special  
7                   prominence and place certainly when courts come  
8                   to interpret matters in other statutes. So they  
9                   are, for instance, tasked with trying to find an  
10                  interpretation, if possible, that is consistent  
11                  with the *Bill of Rights Act*.

12          Q       Thank you. Now, one statute you haven't  
13                  mentioned but I take it you can confirm whether  
14                  or not it would apply to money laundering  
15                  prosecutions, was a statute called the *Criminal*  
16                  *Disclosure Act* of 2008. Are you familiar with  
17                  that statute?

18          A       A little, yes. I think that's more of a  
19                  criminal procedure matter, so I'm not  
20                  immediately sure it has any overlap with the  
21                  anti-money laundering system.

22          Q       Would it apply to anti-money laundering  
23                  prosecution in criminal law?

24          A       Yes. So a prosecution under the *Crimes Act*,  
25                  yes, that would be part of the procedural

1 mechanisms and protections around that.

2 Q And do you know if that *Criminal Disclosure Act*  
3 has been challenged, for example, on the basis  
4 of human rights or -- your human rights law?

5 A I'm sorry, I don't know off the top of my head.  
6 There could well have been some procedural or  
7 evidential challenge over the years, but --

8 Q All right. Thank you.

9 A I'm not familiar with any.

10 Q Thank you. And we -- I think we covered most of  
11 this in your other evidence. The one thing is a  
12 fascinating expression in your report that  
13 perhaps you could explain to us. Perhaps it's a  
14 New Zealand expression. You mention on page 34,  
15 something about "dob in." It's something I'm  
16 not familiar with. Can you explain to us this  
17 very interesting New Zealand expression.

18 A Excellent. Yes, I'm sorry if there's a tendency  
19 to slip into vernacular. We might blame the  
20 Australians for that one also, actually. Dob in  
21 is to report, to blow the whistle or -- I think  
22 it's a schoolyard expression of kids having  
23 to -- I think the Americans might say kind of  
24 fess up, but not to their own misdoings. To  
25 report on something else.

1           Q     Thank you.  And finally, you've already briefly  
2                    touched on your *Overseas Investment Act*.  I take  
3                    it the more recent an amendments to limited  
4                    purchases of used residential land; is that  
5                    correct?

6           A     Yes.  This is tied up in a focus on housing  
7                    shortages and housing affordability issues.

8           Q     Yes.

9           A     And I can't claim to be expert in all those  
10                   details that have recently come through, but  
11                   yes, the -- there are still avenues for foreign  
12                   investment if they are intended to be new  
13                   buildings which will add to the housing stock  
14                   and therefore assist in meeting what's perceived  
15                   as a housing affordability and shortage crisis  
16                   as opposed to people just wanting to invest and  
17                   trade and speculate in existing housing stock.

18           MR. USHER:  Thank you, Mr. Hughes.  That's all my  
19                    questions.

20           THE WITNESS:  Thank you.

21           THE COMMISSIONER:  Thank you, Mr. Usher.

22                    I'll now turn to Mr. Duong on behalf of the  
23                    BC Lottery Corporation, who has been allocated  
24                    10 minutes.

25           MR. DUONG:  Thank you, Mr. Commissioner.

1                   **EXAMINATION BY MR. DUONG:**

2                   Q     Thank you, Mr. Hughes. Can you hear me?

3                   A     Sure. Yes.

4                   Q     Fantastic. As the Commissioner said, I am the  
5                   counsel for the British Columbia Lottery  
6                   Corporation. I just had a few questions just to  
7                   ask of you. And I think the first place I'd  
8                   like to start is with your CV.

9                   MR. DUONG: And if Madam Registrar could pull that up  
10                  real quick.

11                  Q     It mentions here that you've worked with over  
12                  200 reporting entities and that's included  
13                  national banks, credit card issuers, life  
14                  insurers, and you mentioned casino there, and  
15                  it's in singular form. I'm wondering if that is  
16                  a typo or -- but in general whether you can  
17                  provide us with a summary of your experience and  
18                  knowledge of the gaming industry and -- when it  
19                  comes to their AML measures and practices.

20                  A     It is singular. We only have, I think, six  
21                  casinos, in New Zealand, so I think it's a bit  
22                  smaller perhaps than British Columbia. And the  
23                  regulation, the law actually without a law  
24                  change doesn't permit any new casinos at  
25                  present. So that's a client advisory role from

1                   time to time. But as is the case, I guess, in  
2                   the New Zealand economy, that's not a large and  
3                   growing sector.

4           Q       Yeah. I mean, 1 of 6 is still, you know,  
5                   13 percent of all casinos. But my second  
6                   question was actually if you can describe your  
7                   experience and knowledge when it comes to the  
8                   kind of AML measures that they implement and the  
9                   practices that they engage in, if you can speak  
10                  to that.

11          A       A little bit. I wouldn't say I'm expert, but I  
12                   have a little bit of understanding there. And I  
13                   guess, again, it's a sector that is relatively  
14                   or proportionately smaller in New Zealand  
15                   perhaps, and so there's probably not too many  
16                   people with deep expertise in that area anyway.

17          Q       Okay. Thank you. I'm going to jump now into  
18                   your report.

19          MR. DUONG: Madam Registrar, if you can pull up the  
20                   report and jump to the section on enhanced  
21                   customer due diligence. That would be at  
22                   page 30.

23          Q       And, Mr. Hughes, my questions are just going to  
24                   centre around that.

25          A       Okay. So you have a paragraph number there?

1 Q Yeah, 4.43 is what I'm going to start with.

2 A Thank you.

3 Q You refer to the fact that:

4 "Entities have in practice struggled  
5 without a clear signalling device or  
6 criteria in the Act as to what constitutes  
7 sufficient proof of source of funds (and  
8 hence there is wide variation of practice,  
9 even with detailed Supervisor guidelines)."

10 Could you elaborate on that a little bit.

11 A So we talked earlier about how the act is really  
12 high-level principle statements, and so that  
13 sits at an obligation to get information about  
14 source of funds, source of wealth. It doesn't  
15 really go any further in telling you what that  
16 means or how to go about it, so there have been  
17 guidance notes issued by the supervisors and  
18 there is some, albeit limited, international  
19 material from the FATF that can be tapped into  
20 as well. But that's not something that's being  
21 explored in enormous detail yet, certainly not  
22 in our court system. We don't have, you know --  
23 I suppose like any relatively recent new  
24 legislative regime, we don't have a very deep  
25 body of case law yet built up.

1           Q     And when you say that entities have struggled,  
2                   that continues to this day as far as you know?

3           A     Yes.  It's hard to generalize, but I think there  
4                   are interpretational difficulties around what  
5                   sort of documents would suffice to verify  
6                   information.  Sometimes it's easy enough to get  
7                   a customer to provide information but then how  
8                   you go about corroborating that, verifying it  
9                   against some independent source is difficult and  
10                  is a highly discretionary matter depending on  
11                  what types of information and documents might be  
12                  available.

13                         But the regulators have taken the approach  
14                         that, difficult or not, it is consistent with  
15                         the FATF's risk-based approach that entities can  
16                         assess for themselves because they know their  
17                         customer base well how high risk or medium risk  
18                         or whatever a particular scenario will be and  
19                         that should guide them as to how far they should  
20                         go and the steps to try to verify.

21           Q     And I think that is consistent with the  
22                   guidelines you referred to, but I think it might  
23                   be helpful if we went to the enhanced CDD  
24                   guideline issued -- that you footnoted in your  
25                   report.

1 MR. DUONG: So at this point I would ask leave from  
2 the Commissioner to show this document to the  
3 witness. Oh, there it is. We provided notice  
4 on it just yesterday.

5 THE COMMISSIONER: All right. Ms. Latimer, do you  
6 have any objection to that?

7 MS. LATIMER: The document is cited in the report at  
8 footnote 25. It is a 22-page document. It was  
9 sent yesterday evening. I forwarded it to the  
10 witness this morning but given the time change,  
11 I don't know if he's had a chance to review it.  
12 So my only concern would be fairness to the  
13 witness. If the witness is happy to speak on  
14 the document, I don't object to it.

15 THE COMMISSIONER: Mr. Hughes, are you content to  
16 speak with respect to this document or would it  
17 be difficult for you given the truncated time  
18 you've had to look at it?

19 THE WITNESS: No, that's fine, sir. I'm happy to  
20 speak. I haven't reviewed it in the time  
21 available this morning, but I have a general  
22 working familiarity with it.

23 THE COMMISSIONER: All right. Thank you, sir. Yes,  
24 Mr. Duong. Go ahead.

25 MR. DUONG: Thank you, Mr. Commissioner.



1                   I would ask Madam Registrar to take us to  
2                   page 18, which is where I think those additional  
3                   details on enhanced customer due diligence are  
4                   located.

5           Q     Do you see that, Mr. Hughes?

6           A     Yep. Do you have a paragraph number we're  
7                   interested in?

8           Q     Yes. Yeah, I will. I'm going to start with  
9                   paragraph 92 where it states that:

10                   "There are several different forms of  
11                   enhanced CDD established by the Act.  
12                   Establishing your customer source of  
13                   wealth or source of funds is not always a  
14                   requirement of enhanced CDD. Reporting  
15                   entities should determine the requirements  
16                   of enhanced CDD as it applies to their  
17                   customer's circumstances."

18                   And then it goes on and says at the last  
19                   sentence:

20                   "Your program should set out how you will  
21                   do this."

22                   Is that consistent with the risk-based approach  
23                   that you've talked about that the reporting  
24                   entity takes a look at its risk factors and then  
25                   decides whether or not it is appropriate to apply

1 source of wealth or source of funds or both?

2 A Yes, I think that is broadly consistent. I  
3 can't quite see on screen the footnote, the 53,  
4 but my hunch is that might refer to other things  
5 such as wire transfers, which also trigger a  
6 type of enhanced CDD but not one that  
7 necessarily goes into source of wealth. It's a  
8 different form. But something along the lines  
9 we discussed earlier, say, a complex or  
10 unusually large transaction or a politically  
11 exposed person, those forms of high-risk  
12 situations generally lead to a source of wealth  
13 or source of funds inquiry.

14 Q And it doesn't sound as though there's a  
15 prescription as to when a reporting entity must  
16 engage in a source of funds versus a source of  
17 wealth. Could you speak to that? When source  
18 of funds would be trigger as opposed to source  
19 of wealth, or if that's up to the risk-based  
20 assessment?

21 A I think that is a risk-based assessment. The  
22 statutory requirements -- there's a trigger for  
23 when the enhanced CDD process must be done, so a  
24 time frame, et cetera, but I think there's a  
25 different trigger to what you're asking me

1                   about. So whether it's source of funds or  
2                   source of wealth that's generally a process for  
3                   consideration of the scenario, what is it that  
4                   we are looking at. It might be in many cases  
5                   that the two overlap or you need to do a bit of  
6                   both. So would it help if I gave you a simple  
7                   example?

8           Q        Absolutely.

9           A        So if there's funds incoming to New Zealand from  
10           an overseas source through a bank account or a  
11           money remit or whatever, if that were, say,  
12           unusually large, then there might be a need for  
13           some inquiry into the source of wealth of the  
14           person sending that. So looking at their  
15           assets, how they built up their wealth, their  
16           business, whatever interest it is. So is it  
17           likely and logical that a person in that  
18           situation would be sending such a large sum of  
19           money.

20                    There might also be -- it might be easier or  
21           better sometimes to focus on the specific  
22           transaction and say well, what about these  
23           particular funds? Not just is this person a  
24           wealthy or successful businessman and likely to  
25           have access to that level of funding, but this

1 particular money coming from New Zealand from  
2 some other place, is that -- can we verify that  
3 that's come from a sale of that business or a  
4 sale of a property or something more granular  
5 perhaps.

6 Q That's very helpful. Thank you, Mr. Hughes. I  
7 think my next line of questioning has to do with  
8 what the term "source of funds" actually  
9 involves. And I'd like you to just turn to  
10 paragraph 100. This is part of a section that's  
11 entitled "How to Obtain and Verify Information  
12 About Source of Wealth Or Source of Funds." Do  
13 you see that, Mr. Hughes?

14 A Yes. 100?

15 Q Yes. So it says there that:

16 "To help verify information about source  
17 of wealth and source of funds, you may be  
18 able to use publicly available  
19 information on the internet or other  
20 commercially available databases."

21 So could you describe the kind of information  
22 that one would find from public sources that  
23 would verify the source of funds.

24 A If you take the previous example, so a focus  
25 would be initially, I guess, on the customer or

1           the person sending that money into the  
2           jurisdiction, so what can you learn about that  
3           customer either from direct inquiry of your  
4           customer or from internet open source searching  
5           information. If, for instance, they say the  
6           money is being sent from the proceeds of sale of  
7           a business, is there -- are they in a country  
8           where there's some ownership register so you can  
9           look up a company's office registry and see that  
10          yes, they did appear to be a shareholder of that  
11          business until recently.

12                    Can you corroborate it through maybe a third  
13          party such an accountant who would verify and  
14          say yes, I handled this transaction and assisted  
15          this person in disposing of their business and  
16          things like that.

17                    So the challenge -- and this is where it is  
18          a difficult area -- is how far you go and what do  
19          you do if you're dealing with jurisdictions that  
20          don't have such publicly available information.  
21          So your average Google search might throw out a  
22          little bit, but not often enough to discharge the  
23          obligation if it's truly a high-risk situation.  
24          But that's very fluid for entities to decide how  
25          far they should go, how many steps and what types

1 of documents.

2 Q Yeah, so it sound like if there was public  
3 information about a sale of a business or maybe  
4 someone won the lottery or is engaged in, you  
5 know, has a high salary that's publicly  
6 reported, that would give a reporting entity an  
7 idea as to where the funds that they're  
8 receiving are likely coming from and that would  
9 constitute a source of funds inquiry?

10 A Yes. It would be corroborating to the extent  
11 that you need to take reasonable steps depending  
12 on the risk in that situation to say yes, that  
13 makes it seem likely and credible that this  
14 person would be -- you know, would have that  
15 sort of funds lying around and would be sending  
16 it to New Zealand for whatever purpose,  
17 investment or other.

18 Q Okay. And if I can -- those kind of examples I  
19 think are listed at paragraph 106, so just to  
20 the next page. It has that list there of a full  
21 bank or other investment statements, government  
22 issued documents or data, full pay slip or wage  
23 slip, inheritance, audited financial accounts,  
24 copy of a will, sales and purchase agreements.

25 Would you agree that these are the kind of

1 documents that would -- some of them or all of  
2 them constitute proof of both source of funds  
3 and source of wealth or do some sort of fall  
4 more into source of wealth and some fall more  
5 into source of funds?

6 A I think that's the regulator's guidance on a  
7 range of possible documents that would cover  
8 both.

9 Q Okay.

10 A Depending on the situation. This is a very fact  
11 specific sort of thing, and so -- and it may  
12 turn on the information the customer's given  
13 directly to the reporting entity about why they  
14 say they're doing this transaction or where the  
15 money's come from or also what the purpose of it  
16 is. What's the nature and purpose of the  
17 investment or the transmission of money to New  
18 Zealand.

19 So you know, if they say it is a sale and  
20 purchase, then yes, an agreement document  
21 combined with, you know, some sort of a company  
22 registry or an accountant's letter would seem to  
23 cover both, I guess, in most scenarios. It's  
24 not prescriptive to that level of detail. It's  
25 saying here's a range of documents you could

1 use, but it's not exhaustive.

2 Q So would it be fair, then, to say that the term  
3 "source of funds," at least as it's used in New  
4 Zealand, could refer to evidence generally of a  
5 source of a person's money or funds? You know,  
6 for example, a financial statement showing a  
7 large and liquid bank account as opposed to the  
8 exact origin of every dollar that is brought  
9 into the reporting entity?

10 A I think there is a section in the document, in  
11 the guidance you're referring to somewhere along  
12 those lines. My understanding is that yes, it  
13 is of necessity sometimes a broad brush inquiry.  
14 You may not need to sift through every dollar or  
15 every income-generating activity, but that's  
16 meant to be assessed by the entity given the  
17 level of risk they perceive in the situation.

18 Q So it sounds like there's a range; right? From  
19 the very specific when it comes to the actual --  
20 like, the receipt from the bank showing this is  
21 where I got my money from versus more general  
22 inquiries as to the person's income source,  
23 i.e., his pay slips or his income tax  
24 statements, that sort of thing?

25 A Yes, I agree there's a range.



1 MR. DUONG: I'd like to enter this document as the  
2 next exhibit, please, Mr. Commissioner.

3 THE COMMISSIONER: Yes, very well.

4 THE REGISTRAR: Exhibit 954.

5 **EXHIBIT 954: Enhanced Customer Due Diligence**  
6 **Guideline - September 2020**

7 MR. DUONG: Mr. Hughes, thank you, I have no further  
8 questions.

9 THE WITNESS: Thank you.

10 THE COMMISSIONER: Thank you, Mr. Duong.

11 I'll turn now to Ms. Tweedie on behalf of  
12 the British Columbia Civil Liberties  
13 Association, who has been allocated 10 minutes.

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

15 **EXAMINATION BY MS. TWEEDIE:**

16 Q Mr. Hughes, can you hear me all right?

17 A Sure. Good morning -- or good afternoon where  
18 you are.

19 Q Thank you. I'd like to -- several of my  
20 questions have already been answered in your  
21 evidence, but I would like to first turn back to  
22 the criminal proceeds recovery regime. You gave  
23 evidence earlier about how -- well, and also in  
24 your report it's stated that the act is focused  
25 on significant criminal activity. And in answer



1                   prevention as a fleet of criminal toys  
2                   being loaded up onto a confiscation truck  
3                   pursuant to a surprise freezing order  
4                   operation."

5                   So my first question is you would agree that that  
6                   evidence showing that assets have been forfeited  
7                   is not the equivalent to evidence showing that  
8                   crime has been deterred?

9                   A     I think I would agree with that.  I think the  
10                   part you quoted, and with apologies for the  
11                   somewhat flowery language in hindsight, the  
12                   point there was maybe to set up what's in the  
13                   footnotes which is reference to a couple of  
14                   high-profile media reported operations.  So  
15                   that's a question that possibly your other  
16                   witness from New Zealand in a few days might  
17                   answer, but from the outside I think the police  
18                   would say it's having a significant deterrent  
19                   effect on gang activity in particular.

20                   Q     And this evidence -- and I will ask the  
21                   witnesses next week, but from your understanding  
22                   this evidence of deterrence is anecdotal and not  
23                   based on empirical evidence, I'm assuming.

24                   A     I think that's right.  I'm not way aware of  
25                   empirical studies, but the police certainly have

1                   dollar figures of the value of assets that have  
2                   been stripped out of using these powers, so they  
3                   could give you values.

4           Q        Okay. Values but likely not evidence showing  
5                   the connection to actually deterring crime?

6           A        Well, I think the deterrent element is probably  
7                   to some extent qualitative.

8           Q        Okay. Thank you. I understand that the  
9                   proceeds obtained from this regime are lodged in  
10                  a proceeds of crime fund that's then  
11                  administered by the Ministry of Justice. Is  
12                  that correct?

13          A        That's my understanding, yes.

14          Q        Okay. And a variety of government agencies and  
15                  some NGOs can then apply for those funds to be  
16                  put towards specific projects?

17          A        Yes, that's right. Yep.

18          Q        Are you aware if proceeds that are forfeited  
19                  ever go back to the police?

20          A        I think some of that fund will be used to cover  
21                  their costs such as litigation fees. That's  
22                  probably again a question for the police who  
23                  might have those details at their fingertips.  
24                  For instance, most of the use of that has been,  
25                  say, as an example, for drug rehabilitation

1                   programs. Community programs along those lines  
2                   can apply for funding from that fund, which has  
3                   an -- I guess a symbolic circularity if some of  
4                   those assets have been frozen from drug dealing  
5                   criminal operations. But I don't know if it's  
6                   made available to regular police operations  
7                   other than to make the system a little bit  
8                   self-funding in terms of that ongoing asset  
9                   recovery unit work.

10            Q     Okay. Are you aware of whether police forces  
11                are among those entities that are able to apply  
12                to the Ministry of Justice for funding?

13            A     I'm not aware. It's possible that some specific  
14                units may do that.

15            Q     Okay. Thank you. Just very briefly I'd like to  
16                touch on paragraph 7.15 of your report, which I  
17                believe Ms. Herbst referred you to earlier. And  
18                you write that changes to the *Overseas*  
19                *Investment Act* in 2018 made it extremely  
20                difficult for a non-resident to buy a house in  
21                New Zealand. And you write that:

22                                "[While] This has helped in small ways,  
23                                but certainly not corrected, the runaway  
24                                property market."

25                Is it fair to say that foreign investment has

1                   formed just a small part of the problem of New  
2                   Zealand's runaway property market?

3                   A     Yes, I think that's my personal opinion.  
4                   Various commentators have lots of opinions on  
5                   this, but you can see that even since the COVID  
6                   situation and our first seven-week lockdown in  
7                   New Zealand last year the property market has  
8                   gone on a remarkable growth pattern since then,  
9                   and that's presumably not fueled by immigrants  
10                  or new people coming to New Zealand, so that has  
11                  confounded a number of property and economic  
12                  commentators.

13                 Q     Okay. Thank you. My last area of questioning  
14                  is around privacy law considerations which  
15                  Ms. Latimer asked you about earlier. And you  
16                  stated that privacy law considerations must of  
17                  course be balanced with AML obligations and that  
18                  the privacy commissioner is given an express  
19                  role in the AML regime and at certain points is  
20                  an active contributor. So, for instance, before  
21                  issuing suspicious activity guidelines I  
22                  understand that the privacy commissioner must be  
23                  consulted with?

24                 A     That's right.

25                 Q     And that regulations for information sharing

1           among agencies can only be passed after the  
2           government has consulted with the privacy  
3           commissioner?

4           A     Yes, I think that's right.

5           Q     Okay. Would you say that having this built-in  
6           role, consultative role with the privacy  
7           commissioner is essential to striking this  
8           balance between privacy rights and AML?

9           A     It's certainly an important step, yes. I think  
10          it's a helpful role.

11          Q     Okay. Thank you.

12          A     I'm not privy to how those consultations work in  
13          practice, but there is a right or an obligation  
14          there for consultation.

15          Q     Okay. Thank you. And just my last question,  
16          under New Zealand's bill of rights, section 21  
17          states that everyone has the right to be secure  
18          against unreasonable search or seizure whether  
19          of the person, property or correspondence or  
20          otherwise. Broadly speaking, can you tell us  
21          how the right to privacy has been interpreted  
22          under this section?

23          A     I'm not sure I can do that question justice.  
24          The reference in there to an unreasonable  
25          comment, we also have a provision in that act

1           for a justified or reasonable limitation, and so  
2           there have been cases and debate around to what  
3           extent are those justified limitations in a  
4           statute or in a particular scenario. That's not  
5           an area of practice I encounter very often, so  
6           I'm not especially expert to give you a deep  
7           answer on that one.

8           Q     Okay. So privacy law is not an area of  
9           expertise for you.

10          A     Well, privacy law is something I work in, but  
11          what you're really asking about typically arises  
12          in a criminal law situation, a challenge to an  
13          unreasonable search and seizure, a search  
14          warrant or something. So I'm not a criminal  
15          defence barrister so I don't come across those  
16          situations very often.

17          MS. TWEEDIE: Okay. Thank you very much. Those are  
18          my questions.

19          THE WITNESS: Thank you.

20          THE COMMISSIONER: Thank you, Ms. Tweedie.

21                   I'll now call on Mr. Rauch-Davis for  
22                   Transparency International Coalition, who has  
23                   been allocated 10 minutes.

24          MR. RAUCH-DAVIS: Thank you.

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



1 Q Mr. Hughes, can you hear me okay?

2 A Yes, I can. Good morning. Good afternoon.

3 Q Good afternoon. Good morning. So you gave some  
4 evidence today about police taking on more money  
5 laundering cases than they used to, and so I'm  
6 wondering if you could comment on what led to  
7 that shift. Was it the legislative reform in  
8 your mind or anything else?

9 A I suspect it's more driven by law enforcement  
10 priorities and criminal problems that are  
11 evident in society. And by that I mean New  
12 Zealand, like a number of countries, has a  
13 significant and difficult problem with  
14 methamphetamine and drug dealing, drug use and  
15 organized crime groups making a lot of money  
16 from that. There's also been high profile  
17 issues with outlaw motorcycle gang members and  
18 others being deported from Australia to New  
19 Zealand, which has sort of led to new, possibly  
20 more vigorous gang activity around the drug  
21 trade.

22 So I would imagine -- it's a question for  
23 the police, but I imagine their priorities are  
24 driven more around how to respond to that. The  
25 legislative changes probably didn't lead to that

1 situation, but they are seen as a useful tool.

2 Q Great. And I appreciate that police will be  
3 giving evidence as well at this commission. But  
4 I wonder if you can comment on the level of  
5 independence that the police have in New Zealand  
6 regarding the setting of investigative  
7 priorities.

8 A My impression just as an outsider is that it's  
9 relatively independent and they do take care of  
10 guard that independence.

11 In terms of priorities, there are the usual  
12 type of organizational and government strategic  
13 documents. Some of those may be on the websites  
14 and available, but yes, I think they set that  
15 obviously in conjunction with some ministerial  
16 oversight and direction, but generally  
17 independently.

18 Q All right. And so I take it your evidence -- or  
19 your impression is that the shift towards more  
20 money laundering investigations is more of a  
21 cultural shift than a legislative reform.

22 A I would say the legislation now enables those  
23 types of actions, and so it's probably a  
24 decision that is a good tool now available to  
25 use. And it's not divorced from overseas

1 pressures as well, such as we've been discussing  
2 the FATF. So one of the ways in which they  
3 evaluate countries is, are they taking money  
4 laundering actions or not. So -- and I doubt  
5 that's a background factor as well.

6 Q Right. And you also gave some evidence that  
7 there's a new cognizance -- words to this effect  
8 that there's new cognizance that money  
9 laundering extends beyond the primary offender.  
10 And so I guess my question is are you able to  
11 comment, has there been a visible kind of  
12 snowball effect in that once more investigations  
13 are done on money laundering networks are  
14 discovered and further perpetrators or further  
15 money launderers are targeted or discovered?

16 A That's an interesting question. I don't know if  
17 I've seen any evidence or reports to that  
18 effect. I think there's tools as we discussed,  
19 to look at affiliates and family members and  
20 others who may be holding assets on behalf of a  
21 person, but I haven't seen that spur on further  
22 investigations necessarily.

23 Q Thanks. Also today you've mentioned that the  
24 police are the fulcrum of the AML regime in New  
25 Zealand. And --

1           A     I will regret using that word, won't I?

2           Q     It's sounds apt from your description. But my  
3                   question on that regard is do you have a  
4                   sense that -- is there a problem with too much  
5                   information coming to the police or is there  
6                   ever a situation where they just become  
7                   inundated with information from these reporting  
8                   entities or do you know of any steps taken to  
9                   ensure that they're able to accommodate large  
10                  amounts of information?

11          A     I think there's a risk of that and particularly  
12                   since 2017, 2018 when they began receiving not  
13                   just suspicion-based reports but cash and wire  
14                   transfer reports. That is a lot of data and  
15                   they've also got more reporting entities now  
16                   providing it. I think they've been given  
17                   additional resources to try to scale up and  
18                   handle that and some of it will be driven by  
19                   automation and software tools, I imagine. But  
20                   yes, it's certainly a challenge.

21          Q     Okay. But from your view it's been managed  
22                   adequately so far?

23          A     Well, I don't have insight to the workings  
24                   inside that police team, but reporting entities  
25                   sometimes question that there's so much data

1                   being provided and they don't necessarily see an  
2                   immediate output. Is it being used well, is it  
3                   being used for the right purpose, that's a  
4                   common complaint. Equally the police may say  
5                   well, we have a job to sift and filter and  
6                   analyze this from a hundred different sources  
7                   and we can't often tell if it's helpful in  
8                   leading to an active investigation; you'll know  
9                   that when it spits out later in the court  
10                  process. So there's a sort of different parts  
11                  of that debate both ways, I think.

12                Q     Switching topics a little bit. But the report  
13                   that you provided to the commission covers  
14                   beneficial ownership in some parts of it. And  
15                   including in the context of CDD requirements  
16                   there's a mention that beneficial ownership  
17                   presents some challenges and today you  
18                   referenced the Panama papers.

19                               And so all told, I take it from an AML  
20                   perspective policy makers in New Zealand have  
21                   identified trusts and corporate entities  
22                   carrying a relatively high degree of risk?

23                A     Yes, and I think the FATF report acknowledges  
24                   that as well.

25                Q     Right. And so the act and regulations

1           referenced in your report require entities --  
2           reporting entities to verify beneficial  
3           ownership; right?

4           A     Yes, that's right.

5           Q     And I think you've mentioned two standards.  
6           There's a simplified standard and an enhanced  
7           standard?

8           A     Yes. There is -- for CDD, due diligence on your  
9           customer, there's three. There's simplified,  
10          standard and enhanced. Beneficial ownership, it  
11          sort of cuts across those issues in some ways.  
12          By that I mean it targets the people to which  
13          you must apply one of those three standards.  
14          The people could be the customer, could be a  
15          person acting on behalf of that customer or it  
16          could be any beneficial owner of a customer.

17          Q     All right. I'm wondering -- so there is the  
18          requirement to verify the information. I'm  
19          wondering what steps would -- let me rephrase my  
20          question. What does it mean to verify? What's  
21          the requirement to verify?

22          A     The basis is to try and verify that against some  
23          documents or data or information issued by a  
24          reliable or independent source. That's in the  
25          statute. And the level to which you must go is

1                   where the risk-based approach comes in, and this  
2                   introduces a lot of grey area for reporting  
3                   entities as to what in any given scenario would  
4                   amount to reasonable steps to verify according  
5                   to the level of risk you're facing.

6           Q       Right. And correct me if I'm wrong, but my  
7                   understanding is that there's no obligation on  
8                   the trust or corporation itself to maintain  
9                   beneficial ownership information in a records  
10                  office or anything like that.

11          A       Generally that is correct. Not in a public  
12                  forum. So a company must maintain a share  
13                  register, basic things like that. But if you're  
14                  saying that in terms of public registries, no.  
15                  Our companies office does have a requirement now  
16                  which was relatively recently introduced for --  
17                  if there's layers of corporations for an  
18                  ultimate beneficial owner to be listed, but that  
19                  might simply be a company name, sometimes in  
20                  Switzerland or the Cayman Islands where there is  
21                  no public information about it.

22          Q       Right. One of the FATF's recent criticisms of  
23                  New Zealand is that there are insufficient  
24                  mechanisms for authorities to obtain adequate  
25                  and accurate beneficial ownership information.

1                   You know that; right?

2           A        I think that's right, yeah.

3           Q        Yeah. That's the 2021 report from this year.

4                   Do you know if there's been any movement to set  
5                   up a registry, a public registry of beneficial  
6                   ownership information in New Zealand?

7           A        Yeah, there was discussion of that in 2018 by  
8                   the relevant ministry. They put out a  
9                   discussion paper about that. It was around the  
10                  time where we saw the beginnings of a push,  
11                  particularly around the UK and other countries,  
12                  to press for more public beneficial ownership  
13                  registers. So apart from that initial foray by  
14                  the relevant government ministry that process  
15                  seems to have rather stalled.

16           MR. RAUCH-DAVIS: Okay. Thank you, sir. Those are  
17                   all my questions.

18           THE WITNESS: Thank you.

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

20                   Anything arising, Ms. Tweedie?

21           MS. TWEEDIE: Nothing arising. Thank you.

22           THE COMMISSIONER: Thank you. Mr. Duong. Mr. Duong,  
23                   anything arising?

24           MR. DUONG: I apologize. No, nothing arising. I  
25                   just wanted to correct my math. 1 of 6 is



1                   actually 16.67 percent and I wanted to give  
2                   Mr. Hughes his due credit.

3                   THE COMMISSIONER: Thank you.

4                   THE WITNESS: I could not have done that in my head,  
5                   so you're ahead of me, sir.

6                   MR. DUONG: I had to check.

7                   THE COMMISSIONER: I don't think Mr. Duong did it in  
8                   his head either.

9                   Mr. Usher. Mr. Usher, anything arising?

10                  MR. USHER: Nothing arising, Mr. Commissioner.

11                  THE COMMISSIONER: Thank you. Ms. Herbst?

12                  MS. HERBST: Nothing arising. Thank you.

13                  THE COMMISSIONER: Ms. Stratton?

14                  MS. STRATTON: Nothing arising. Thank you.

15                  THE COMMISSIONER: Thank you. Ms. Latimer?

16                  MS. LATIMER: Just very briefly.

17                  **EXAMINATION BY MS. LATIMER (continuing):**

18                  Q     Mr. Hughes, my friend Mr. Duong asked you some  
19                       questions about the enhanced customer due  
20                       diligence guidelines. Do you remember that line  
21                       of questioning?

22                  A     Yes. Yeah, I do.

23                  MS. LATIMER: Madam Registrar could I have that  
24                       document displayed, please. Could I go, please,  
25                       Madam Registrar, to page 18. And could you just

1 scroll down a bit, Madam Registrar.

2 Q I just wanted to ensure that we had your  
3 evidence clearly on the distinction between  
4 source of wealth and source of funds. We can  
5 see here at paragraph 94 this document provides  
6 that the customer's source of wealth is the  
7 origin of their entire body of assets. And then  
8 if you look at paragraph 95 it provides:

9 "Your customer's [source of funds] is more  
10 narrowly focused. It is the origin of the  
11 funds used for the transactions or  
12 activities that occur within the business  
13 relationship with you. This also applies  
14 for an occasional transaction or  
15 activity."

16 And is that consistent with your understanding of  
17 the distinction between those two terms?

18 A Yes, that is. I think I recall rightly when we  
19 were discussing this earlier with Mr. Duong that  
20 I believe there was a reference to that. So  
21 that's what the supervisors say about it, and  
22 that's broadly in accordance with my  
23 understanding too.

24 Q And then just carrying on at paragraph 96, in  
25 terms of when you might be focusing on source of

1 funds versus source of wealth, this document  
2 provides:

3 "In circumstances where you are  
4 establishing or updating your customer's  
5 risk profile you may need to collect and  
6 verify information regarding their [source  
7 of wealth]. However, when enhanced  
8 [customer due diligence] is triggered by  
9 circumstances involving transactions or  
10 activities, you may need to focus more  
11 specifically on the [source of funds]."

12 Is that consistent with your understanding of  
13 when you would be seeking those separate enhanced  
14 customer due diligence measures?

15 A Yes, that is consistent, and if I go back to my  
16 basic example from earlier, if you've got a  
17 wealthy new customer or maybe a wealthy overseas  
18 client for a law firm, you may need to -- and  
19 you may want to understand a little bit about  
20 how they've built up their body of wealth and  
21 then if they're sending a specific fund to New  
22 Zealand for a transaction that would lead to  
23 what they describe as a more narrow focus on the  
24 particular funded transaction and what that's  
25 about.

1 Q Thank you. And just picking up on that.

2 MS. LATIMER: Madam Registrar, if we could go,  
3 please, to page 19. Just scroll down a little  
4 bit, please.

5 Q At paragraph 104 you say a more narrow focus.  
6 This document says:

7 "Verifying your customer's funds should be  
8 a more granular process. The information,  
9 data, or documents that you use should be  
10 specific to the business relationship or  
11 to their activities and transaction  
12 behaviour."

13 And that's basically what you're describing in  
14 that example; is that correct?

15 A Yes, it is.

16 MS. LATIMER: Thank you. And then just lastly, Madam  
17 Registrar, if we could go to page 20, please.

18 Q You made the point that it's very fact specific  
19 what you might be looking at. And paragraph 108  
20 says that:

21 "Documentation accepted to verify [source  
22 of wealth] or [source of funds] should  
23 depend on the level of [money  
24 laundering/terrorist financing] risk  
25 presented by the customer. The higher the

1 risk, the more comprehensive and reliable  
2 documents you [should] obtain ..."

3 And I take it you agree with that?

4 A Yes, that's right. Invites some consideration  
5 by the entity as to what the situation requires.

6 MS. LATIMER: Okay. Thank you. Those are all my  
7 questions, Mr. Commissioner.

8 THE COMMISSIONER: Thank you, Ms. Latimer.

9 And thank you very much, Mr. Hughes, for  
10 engaging with the commission. I think it's very  
11 helpful for us to hear evidence of how other  
12 jurisdictions approach and attempt to deal with  
13 matters of money laundering and their particular  
14 circumstances, and your evidence has been very  
15 thoughtful and helpful to us. I'm very  
16 appreciative of you taking the time to join us.

17 And I do recognize that for you the earlier  
18 break was a morning break given that you started  
19 I think at 7:00 a.m. your time. So, again, I'm  
20 grateful for that. You're now excused from  
21 further testimony.

22 **(WITNESS EXCUSED)**

23 THE COMMISSIONER: And, Ms. Latimer, we will adjourn.

24 I think we're in a situation now where tomorrow  
25 has changed and we're now adjourning until

1                   Wednesday at -- you're going to have to help me  
2                   with the time.

3                   MS. LATIMER: I'll help you. Let me help. We can  
4                   adjourn to Wednesday at 9:30. And I can advise  
5                   there's been a change in the schedule, so we've  
6                   moved tomorrow's witness to Friday.

7                   THE COMMISSIONER: Thank you. So Wednesday at 9:30.

8                   THE REGISTRAR: The hearing is now adjourned until  
9                   May 5th, 2021, at 9:30 a.m. Thank you.

10                   **(PROCEEDINGS ADJOURNED AT 3:20 P.M. TO MAY 5, 2021)**

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