

**PROCEEDINGS AT HEARING
OF
MAY 6, 2021**

COMMISSIONER AUSTIN F. CULLEN

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1

May 6, 2021

2

(Via Videoconference)

3

(PROCEEDINGS COMMENCED AT 8:00 A.M.)

4

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

5

THE COMMISSIONER: Thank you, Madam Registrar.

6

Yes, Mr. Martland.

7

MR. MARTLAND: Thank you, Mr. Commissioner. Today's
witness is Dr. Jason Sharman.

8

Madam Registrar, if the witness could please
affirm.

9

JASON SHARMAN, a witness

10

called for the

11

commission, affirmed.

12

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

13

THE WITNESS: My full name is Jason Campbell Sharman.

14

The first name is J-a-s-o-n. Sharman is
S-h-a-r-m-a-n.

15

THE REGISTRAR: Thank you.

16

MR. MARTLAND: Thank you. Madam Registrar, if we
could please display the witness's CV.

17

EXAMINATION BY MR. MARTLAND:

18

Q Dr. Sharman, as the CV comes up on screen, it

1 will be familiar to you. I'll start by asking,
2 I hope, a simple question. Do you recognize
3 that as being your CV?

4 A Yes, I do.

5 MR. MARTLAND: Mr. Commissioner, I'll ask that that
6 please be marked the next exhibit.

7 THE COMMISSIONER: All right. That will be 958.

8 THE REGISTRAR: Exhibit 958.

9 EXHIBIT 958: Curriculum Vitae of Jason Sharman

10 MR. MARTLAND:

11 Q As the TV displayed on the screen indicates,
12 sir, you hold a number of titles at Cambridge
13 University. The Sir Patrick Sheehy professor of
14 international relations. You have a
15 professorial fellow role at King's College,
16 Cambridge, and head of department with politics
17 and international studies within the University
18 of Cambridge. Do I have that accurately?

19 A Yes.

20 Q You've also in your previous capacities in
21 Australia served as a professor for a decade at
22 Griffith University, prior to that with the
23 University of Sidney as a post-doctoral fellow
24 and lecturer and then for a few years before
25 that worked at the American University in

1 Bulgaria?

2 A Yes.

3 Q And by way of background and your education, you
4 have both a PhD and masters from the University
5 of Illinois at Urbana-Champaign and before that
6 a BA honours history and political science at
7 the University of Western Australia?

8 A Yes.

9 Q And I won't spend a lot of time reading through
10 it, but as I count the tally of the books that
11 are identified that you've written on your CV,
12 it's close to a dozen books, a number of those
13 books selected for awards and prizes?

14 A Yes.

15 Q And of perhaps some relevance to the work we're
16 doing here, I note the first most recent title
17 that's identified here, *Outsourcing Empire: How*
18 *Company-States Made the Modern World from*
19 Princeton University Press. A few titles down,
20 *The Despot's Guide to Wealth Management: On the*
21 *International Campaign against Grand Corruption*
22 from 2017. Those are two of the books that
23 you've written or coauthored?

24 A Yes.

25 O If we go to the next page, about two down from

1 the top, *The Money Laundry: Regulating Criminal*
2 *Finance in the Global Economy.* Down a few more
3 titles, coauthoring the book *Corruption and*
4 *Money Laundering: A Symbiotic Relationship.*

5 Again, some of your titles?

6 A Yes.

7 Q And within the list of journal articles I won't
8 spend time on it, but on my math about 50
9 journal articles and in addition to that
10 identified in the CV about a dozen book chapters
11 all part of quite a corpus of written work that
12 you've produced on a number of topics, including
13 corruption and money laundering?

14 A That's correct.

15 MR. MARTLAND: Madam Registrar, if we could turn to
16 page 8, please, of the document.

17 Q On page 8, having identified the book chapters
18 as well as major grants, there's then a list of
19 awards and prizes. One of the prominent one,
20 because it's a highly select membership, you're
21 a fellow of the British Academy?

22 A Yes.

23 Q If we go over one more page. And at the bottom
24 of page 9 you list some of the different hats
25 that you've worn or roles that you've served in,

1 I suppose, as a consultant in various
2 international capacities. So at the very bottom
3 of that page with the World Bank and the UN
4 Office on Drugs and Crime, the Stolen Assets
5 Recovery Initiative. You've been engaged with
6 that body, I think, on a number of occasions.

7 A That's correct.

8 Q At the top of the next page we see work with the
9 Kenyan Ethics and Anti-Corruption Commission,
10 giving expert opinion evidence in the US
11 District Court in Massachusetts. And then
12 through the page and without taking you through
13 detail, but it's quite a trip around the globe:
14 Norway, Panama, the US, Philippines, Fiji,
15 France and other points.

16 A That's correct.

17 Q And I think -- I wonder if I could ask you as a
18 fairly general question. I take it from my
19 understanding of the work that you've done
20 certainly a decent component of that would be
21 traditional or classic researched-based
22 analytical writing on a host of policy issues.
23 We've also -- maybe it's a little spy-like to
24 say that it's undercover detective work, but
25 you've actually gone out and done effectively

1 investigative work that is probably quite
2 different from library-based work. Is that fair
3 to say?

4 A [Indiscernible] shopping for -- seeing whether
5 it's possible to buy anonymous shell companies
6 in violation of international standards aiming
7 to prohibit such shell companies.

8 Q And maybe you can tell the Commissioner the
9 nature of that work and what it was you were
10 seeking to do on the occasions where you've
11 engaged in that line of investigation.

12 A Certainly. So international standards mandate
13 that authorities must be able to look through
14 shell companies to find the real or the
15 beneficial owner, but that depends upon those
16 who set up and sell shell companies, collecting
17 that information in the first place. And rather
18 than just reading regulations or legislation, I
19 wanted to know whether in fact it was possible
20 to obtain a shell company without disclosing my
21 ID.

22 And so as part of that effort, first off
23 individually and then in combination with two
24 other researchers, we went on something of a
25 mystery shopping expedition where we made

1 thousands and thousands of solicitations for
2 anonymous shell companies to so-called corporate
3 service providers based in pretty much every
4 country in the world, around about 170, to see
5 in practice whether they were willing to sell us
6 shell companies, no questions asked, without us
7 having to prove our ID, prove our identity. And
8 in some cases I went through and actually then
9 bought shell companies and set them up and set
10 up corresponding bank accounts.

11 Q And there's a few points in your report -- and
12 we'll turn to the report in a moment -- you draw
13 on some of that work to give us a perspective on
14 it, but maybe to give us the plot spoiler at a
15 general level, what sorts of conclusions or
16 insights did you gain from embarking in that
17 mystery shopping, as you describe?

18 A Very broadly, there were three conclusions. One
19 is that in principle anonymous shell companies
20 should be unavailable, but in practice they are
21 quite easily available because many
22 jurisdictions in fact -- it's possible remotely
23 to buy such shell companies. So roughly a
24 quarter of the replies that we got didn't ask
25 for sufficient ID and about another quarter

1 didn't ask for any identity at all when people
2 were offering to sell us a shell company, in
3 effect making the shell companies untraceable or
4 anonymous.

5 Secondly, that both corporate service
6 providers and banks are very much insensitive to
7 risk in that some of our approaches were
8 deliberately high risk, designed to raise red
9 flags through suspicious features normally
10 associated with money launderers or corrupt
11 officials. Some were very low-risk approaches.
12 What should have happened is that providers and
13 banks should have been much more worried by and
14 much more discerning and much more inquisitive
15 about the -- and much more likely to reject the
16 high-risk approaches. In fact that didn't
17 happen. It made almost no difference.

18 And finally that in fact some of the
19 countries that did the worst job of applying
20 international standards on beneficial ownership
21 of shell companies were the very same countries
22 that had drawn up the standards in the first
23 place. And particularly -- in particular,
24 English speaking members of the OECD did a
25 particularly poor job of applying the very same

1 international standards on corporate
2 transparency they had drawn up and many of the
3 jurisdictions commonly stigmatized as tax
4 havens, contrary to conventional wisdom, were
5 actually some of the most compliant in applying
6 transparency rules to those looking to form
7 shell companies.

8 MR. MARTLAND: Madam Registrar, we can take down the
9 display of the CV.

10 Q Dr. Sharman to pick up on that last point, that
11 does seem a little counterintuitive because one
12 might expect, just as happens with -- I'm
13 thinking of the example of flag states for ships
14 where you see an untold number of Liberian-
15 registered ships, which doesn't make a lot of
16 sense, on the Pacific coast of North America,
17 for example, except that there's a forum
18 shopping dynamic there.

19 And I wonder if you can just expand on that
20 comment that it seems you sort of describe this
21 sort of, as I hear you, commonwealth established
22 English-speaking democracies, et cetera, that
23 may nonetheless perform quite poorly in those
24 examples that you've described of mystery
25 shopping and testing out how easy or hard it is

1 to register a company.

2 A I think there are two reasons in particular. I
3 think from the best possible motives, countries
4 like the US, Britain, Canada, Australia and New
5 Zealand have sought to make it easy to form
6 companies. I think this is perfectly sensible.

7 It makes life easy for business people there.

8 Of course most companies formed are used for
9 entirely legitimate purposes and there are good
10 reasons why you would want to make forming a
11 company cheap and easy for legitimate business
12 purposes.

13 Unfortunately if you make it cheap and easy
14 for legitimate business purposes, that also
15 makes it easy for criminals. The second
16 dynamic, I think, is that tax havens have been
17 under severe international outside pressure for
18 20 years, whereas countries that are in clubs
19 like the OECD or the Financial Action Task Force
20 have been under much less pressure and as a
21 result they have had less incentive to reform
22 and tighten up standards and particularly the
23 enforcement of those standards.

24 MR. MARTLAND: Madam Registrar, if we could please
25 bring up the report.

1 Q And I'll have that on display there,

2 Dr. Sharman. Do you recognize that as being as
3 it's identified as, the report that you've
4 authored for this commission?

5 A Yes. Yes.

6 MR. MARTLAND: Mr. Commissioner, if I could ask that
7 the report please be marked as exhibit -- I
8 think 959.

9 THE COMMISSIONER: Yes, very well.

10 THE REGISTRAR: Exhibit 959.

11 **EXHIBIT 959: GPEB Report of Findings - Failure**
12 **to Report - Paragon Gaming (dba) Edgewater**
13 **Casino - October 4, 2010**

14 MR. MARTLAND:

15 Q And as we see there, this is a report that was
16 produced at the request of this commission for
17 the purpose of helping to give us some insight
18 for our work, professor; is that fair?

19 A Yes.

20 Q To give us first the context for what will
21 follow, but without leaping ahead to all the
22 detail of it, you write in the first paragraph
23 that the report broadly addresses three areas.

24 "First, it takes a comparative approach to
25 assessing money laundering threats,

1 current anti-money laundering (AML)
2 policy, and potential future improvements
3 to this policy. Second, it examines
4 threats and current and potential
5 responses to the laundering of the
6 proceeds of foreign corruption offences."

7 And maybe I'll just pause there to underline the
8 words "foreign corruption." That's really the
9 focus of that section of the report is on, I
10 suppose, a subset of money laundering activity
11 specifically the laundering of foreign
12 corruption proceeds?

13 A Yes.

14 Q All right. And then, third:

15 "..." the report focuses on current and
16 potential future strategies for
17 confiscating illegal assets."

18 A Yes.

19 Q You go on in the next paragraph to make a few
20 comments, including that the report is
21 "deliberately uneven" and that in different
22 places you both agree or sometimes disagree with
23 the conventional wisdom. Could you simply
24 explain what you mean by some of those comments.

25 A The coverage was selective in that first I think

1 local British Columbian and Canadian experts
2 will fairly obviously have a better
3 understanding of local circumstances there. So
4 my expertise is very much international and
5 comparative.

6 Secondly, given some of the other material
7 placed before the commission, I thought it would
8 be unproductive to concentrate on matters that
9 had already been covered in more detail by
10 people who had better knowledge on particular
11 subjects. For example, particular kinds of
12 predicate crimes in British Columbia that might
13 give rise to money laundering.

14 Q At the bottom of that second paragraph you make
15 a comment of the effect that you "write from the
16 perspective of a foreigner, appreciating that a
17 similarly qualified Canadian expert will know
18 the local circumstances better."

19 I take it that you do take some care there
20 to say that you don't purport to speak
21 authoritatively about details in the Canadian or
22 British Columbia situation?

23 A Yes, that's definitely correct.

24 Q I wonder if you could please describe the
25 process that you follow, like what was involved

1 as you wrote this report. What went into this,
2 please?

3 A Sure. It was, I think, partly drew on almost
4 20 years of research and reflection about
5 anti-money laundering and associated policies as
6 they take place in many countries around the
7 world, some similar to Canada, some very
8 different. And as well as this kind of learning
9 process, both from earlier academic work and
10 policy work, I also drew specifically on the
11 sources listed in the bibliography. Many of
12 which do deal specifically with Canada or with
13 British Columbia.

14 Q In terms of the nature of the work that you did
15 here with respect to getting insights about
16 British Columbia and Canada, is it the case that
17 this is drawn more on the body of written work
18 and sources available as opposed to -- and no
19 doubt the pandemic prevented you even had you
20 wanted to, you didn't travel here to Canada or
21 engage in a lengthy set of interviews,
22 et cetera?

23 A Yes, that's definitely true. There was no
24 research on site. Almost nothing in the way of
25 interviews. So yeah, it was written sources as

1 you say.

2 Q All right. At the bottom of that page, the
3 header is "The Current Money Laundering Threats
4 in British Columbia and Canada." And you say at
5 the bottom of that page 1:

6 "This section briefly and selectively
7 covers some of the most important
8 mechanisms of laundering in British
9 Columbia and Canada more . . ."

10 Then down onto the page 2 the next heading is
11 "Cash." I wonder if you could comment on the
12 ongoing importance of cash as a medium or
13 instrument of money laundering, please.

14 A I think that often people assume that because
15 cash is something of the oldest and the crudest
16 way of money laundering that because we have
17 almost 30 years of anti-money laundering policy,
18 that the use of cash laundering is no longer
19 relevant or common. And I think that's wrong.
20 That cash is probably still one of the most
21 important mechanisms for laundering the proceeds
22 of crime. I think it's more common where you
23 have relatively low value crimes, but even very
24 recently even in jurisdictions that have had
25 anti-money laundering laws for 30 years, there

1 are still cases of drug dealers coming to banks
2 with bags of millions of dollars in cash and
3 being able to deposit that over the counter
4 repeatedly and not being detected through this
5 most unsubtle and unsophisticated style of money
6 laundering.

7 So I think that cash is still relevant for
8 money laundering, and as I say, reports of its
9 death in anti-money laundering are
10 exaggerations.

11 Q Sometimes in the public discourse around this
12 people will point to things like Bitcoin and
13 cryptocurrency and electronic funds to suggest
14 that cash is no longer king, but as I hear you
15 describe it, your take on it is cash remains
16 really central and really an important feature.

17 A Yes. Money launderers don't innovate when they
18 don't have to if old ways still work. Then
19 there's not much incentive to go with new ways.
20 And for many criminal purposes, cash works just
21 fine.

22 Q You have a comment in the middle of that
23 paragraph under the subheading about cash
24 referring to:

25 "Canada's forgiving policy of often

1 returning undeclared cash to those
2 detected carrying it in through the
3 border, with very small penalties."

4 You go on to say:

5 "To an outsider, this policy seems like an
6 incredible favour to international money
7 launderers."

8 I wonder if you could just describe what that
9 comment describes and then how it is that Canada
10 stands out or compares to other jurisdictions.

11 A Where in comparable jurisdictions if people take
12 in large amounts of undeclared cash and it's
13 found, they can usually be pretty assured
14 they're going to lose that cash. And indeed
15 there's probably a fair chance that as well as
16 losing the cash, they'll be charged with a money
17 laundering offence or at the very least they
18 have to come up with a good reason why they
19 shouldn't be charged with a money laundering
20 offence.

21 And, say, in jurisdictions like Australia in
22 fact that's the single greatest route of money
23 laundering prosecutions is people bringing in
24 undeclared cash across the borders. So relative
25 to that sort of policy, Canada's approach seems

1 very much a case of taking kid gloves or using
2 kid gloves.

3 Q And to the extent that what might result in a
4 number of cases is a small penalty but not
5 necessarily confiscation and very unlikely to be
6 prosecution or investigation or something more
7 involved, I take it that gives rise to the
8 dynamic that the risk of a smaller penalty could
9 be just simply the cost of doing business for a
10 money launderer?

11 A Very much so. Especially when it seems that
12 obviously a majority of undeclared or almost
13 certainly a majority of undeclared cash is not
14 found at the border. So even if it's a small
15 fraction that's detected and then only a small
16 fraction of that small fraction actually suffers
17 a meaningful penalty, then those sanctions are
18 not dissuasive. They don't create a deterrent.
19 And as you say, criminals, money launderers may
20 just see that as a fairly low and acceptable
21 cost of business.

22 Q I wanted to pick up on that comment about the
23 deterrent or dissuasive effect of different
24 approaches. Is it your view that money
25 launderers -- I'm thinking here of more

1 sophisticated sorts of players that are putting
2 some real effort into figuring what the
3 mechanism is for money laundering. Are they in
4 your mind likely to be more responsive to the
5 deterrent effects, in other words that they
6 might look at one jurisdiction and say, let's no
7 longer target that province, that country, that
8 jurisdiction because things are tightening up;
9 we should look to a different place?

10 A I think that dynamic is it more likely to be the
11 case as you say with third party or so-called
12 professional money launderers that are dealing
13 with relatively large sums and less likely to
14 apply to those engaged in so-called self-
15 laundering where the proceeds of crime are
16 relatively small and can be fed pretty directly
17 into things like retail purchases.

18 Q When you describe self-laundering, is that more
19 like to be to be domestic in the sense that it
20 may stay within the borders of that host or home
21 country?

22 A Yes, that's correct.

23 Q Okay. The next heading refers to "A 'Vancouver
24 Model?' Casinos and Underground Banking." You
25 make reference to reports by Dr. German and

1 Schneider and their description about a
2 Vancouver model. In the next paragraph you say
3 a central feature of that description is the use
4 of casinos.

5 I wonder if I could just pause on that and
6 get an understanding of what the basis is, if it
7 really comes out of the German and Schneider
8 reports, the basis for your description and
9 understanding of this so-called Vancouver Model.

10 A Yes.

11 Q Okay. At the top of the next page you make an
12 interesting point from the perspective of
13 looking at some other jurisdictions and you
14 write:

15 "Though there are certainly well
16 documented examples of large-scale money
17 laundering through casinos elsewhere (e.g.
18 Macau), laundering through casinos is
19 generally only a secondary mechanism for
20 international money laundering."

21 Maybe I can just stop there and ask what you
22 mean by that statement.

23 A Although the state of knowledge we have on money
24 laundering is pretty incomplete and patchy, so
25 there are no really absolute statements that can

1 be made, but on the evidence that we do have,
2 laundering through casinos seems a less
3 important route or means of laundering money
4 than other options such as through the real
5 estate sector or through the use of corporate
6 vehicles, most often shell companies.

7 Q And indeed you go on in the next sentence to
8 make that very point:

9 "In the context of BC, problems with shell
10 companies and real estate are probably
11 more serious ... threats."

12 And you go on to comment on some remedial AML
13 actions that are occurring in the casinos and
14 gaming sector, I take it.

15 A Yes.

16 Q Okay. The next paragraph you refer to
17 underground banking, and in particular that it
18 may be associated with particular ethnic
19 communities. I wonder if you could give us
20 maybe a short primer with respect to what these
21 informal value transfer systems are and then
22 secondly how is it that they may affiliate or
23 associate to particular cultural or ethnic
24 communities.

25 A So these are commonly used for diasporas for

transferring money back and forth between the home country and the country of residence. They're often the actual underground banks themselves. People on either side might be related, those that do the transferring, and they usually take place in cash, not because cash is physically moved from jurisdiction A to jurisdiction B, but because someone might drop off cash in jurisdiction A. And then correspondingly, say, someone will get in touch with the transerrer, will get in touch with their cousin, say, in jurisdiction B, and give out an equivalent sum, again of cash, to a recipient in that jurisdiction.

15 And either the transactions match over time
16 or else perhaps, if there's an imbalance in one
17 direction, eventually there may be some transfer
18 of money between the person -- the transferor in
19 jurisdiction A to jurisdiction B.

20 Q I take it from the comment about the diaspora
21 that -- and I'm hearing a bit of an echo, so if
22 that is creating a problem at any point, just
23 let me know and we can pause to address it.

I take it from that comment about the diaspora that one of the dynamics may be that to

1 the extent that there are certain countries that
2 may have people, populations or members of the
3 same ethnic community scattered around the globe
4 in other countries, this is simply an informal
5 banking or transfer system that allows someone
6 to, for example, send money back home?

7 A Yes, that's right. It's often used for
8 transfers within families.

9 Q And I assume a good part of that activity is
10 legitimate in the sense that it's not using
11 necessarily the big established banks, but it's
12 not criminal in nature.

13 A That's correct in that as far as we know the
14 overwhelming majority of those transfers are
15 used for entirely legitimate and lawful
16 purposes. And indeed in many cases they have an
17 important positive development outcome to, i.e.,
18 the people working, an immigrant working in a
19 richer company and send money often more cheaply
20 than is available through official channels
21 like, say, Western Union back to family in the
22 poorer country for whatever needs they have
23 there.

24 I should say as well just regarding the
25 echo, I do have a headset here, so I could

1 switch to that if an echo is becoming a problem

2 Q I think we can carry on. It's not too bad. It
3 just happened once or twice. So if it gets
4 worse, I will no doubt get a note from our IT
5 guru and we'll deal with it at that point.

6 At the same time is it the case that these
7 informal value transfer arrangements can present
8 a vulnerability or risk of misuse or use for the
9 purpose of money laundering?

10 A Yes, they can simply because of the fact that
11 they're off the books and that there's no
12 official record of them, but they're not part of
13 the anti-money laundering surveillance system
14 that covers formal banking. There is a risk
15 there.

16 Q You have an interesting comment in the bottom of
17 that paragraph, the second paragraph that we see
18 on the screen on page 3 of the report, to the
19 effect that a person using the informal value
20 transfer type of arrangement could actually end
21 up in the same position as the criminal with the
22 bags of drug money, let's say. Could you
23 explain how that's the case.

24 A Usually these transfers do happen in cash, and
25 for the purposes of someone looking to spend

1 that legitimately, that may not pose any
2 problem, but obviously in -- for a criminal,
3 particularly if it's a large amount of money,
4 the whole -- one of the main goals of money
5 laundering is to take cash and move it somehow
6 into the banking system or at least into the
7 formal system. So by itself informal banking
8 may not be particularly useful or at least it
9 may only be a first step or a component of the
10 money laundering scheme.

11 Q In the next section you go on, professor, to
12 discuss three different topics, although there's
13 some relationship obviously between them: real
14 estate, lawyers and trust accounts. I wonder if
15 we could go through those one my one, and ask
16 you first with respect to real estate, the
17 second paragraph under the heading you say it's
18 a "commonly exploited sector for large-scale
19 money laundering." What is the risk with
20 respect to real estate?

21 A I think firstly that real estate -- obviously
22 the sums of money involved are large, and so for
23 criminals who are really -- who have got
24 millions of dollars or perhaps even more than
25 that, that they have a prima facie plausible

1 excuse about what their -- a \$5 million transfer
2 to buy a \$5 million house is not particularly
3 suspicious, at least superficially.

4 I think that real estate can also be not
5 just a store of value for criminals in the same
6 way that real estate is a store of value for
7 legitimate homeowners as well, but in some ways,
8 previewing the point later on about the
9 usefulness for real estate for foreign
10 corruption proceeds, the house can be or the
11 residence can be useful as a kind of a physical
12 vault or escape post for foreign officials who
13 may be fleeing their home country either because
14 they've been caught out or fear they're about to
15 be caught out for corruption, or because they're
16 being exposed to political persecution or both.

17 Q Do you have a perspective of the risk of real
18 estate being used as a mechanism for money
19 laundering specifically for British Columbia and
20 Canada?

21 A I think given the profile of British Columbia
22 and Vancouver that you have very high values
23 that are growing, a large investment from
24 overseas and a pretty lightly regulated sector,
25 both for real estate agents themselves and for

1 ancillary services like lawyers that I think in
2 combination it's a major point of vulnerability.

3 Q Is it an answer or a partial answer that banks
4 can be looked to as a way that suspicious
5 activity is reported and addressed through, for
6 example, the FIU, the financial reporting types
7 of regimes that arise from the FATF model as the
8 mechanism to avoid or minimize those sorts of
9 risks?

10 A In other jurisdictions banks have been
11 insufficient to tackle the risk of money
12 laundering in the real estate sector,
13 particularly money that crosses borders because
14 of the tendency whereby that money is held by
15 professionals, real estate agents or lawyers,
16 often in lawyers' trust accounts. And what
17 banks see is they see the account of the real
18 estate agent or maybe an escrow agent or a
19 lawyer, but they don't see the underlying
20 customer there.

21 Secondarily to that as well is the problem
22 of real estate purchases through shell companies
23 or other corporate vehicles. And, again, in
24 that case, again particularly when the
25 transaction involves international transaction,

1 the failure to identify a beneficial owner can
2 make it a very useful mechanism for money
3 laundering for either domestic criminals and
4 some ways even more so by criminals from abroad.

5 Q What is the role that you describe that the
6 lawyer's trust account may have a role. Could
7 you describe what that is.

8 A So often -- and this is something that's common
9 to other jurisdictions as well -- lawyers may
10 hold their -- that there may be a law firm using
11 a trust account to hold clients' funds. And
12 when the bank performs its know your customer
13 duty, it only sees the law firm, not the
14 underlying customer.

15 And this can be even more risky when there's
16 commingling of clients' funds or when the
17 lawyer's trust account is used for things that
18 really don't have any legal purchase -- any
19 legal purpose but rather a pretty straight out
20 commercial transaction. And if real estate
21 agents -- depending on the jurisdiction, if real
22 estate agents have trust accounts then, again,
23 the same problem can occur. The banks know
24 their customer, the real estate agent, but not
25 their customer's customer. And again if there's

1 commingling of funds, different people's funds
2 are mixed together, then, again, that makes
3 visibility and traceability much more difficult.

4 Q And I take it from that description, then, the
5 fact that money may be held by a lawyer or law
6 firm and that that might -- is a dynamic where
7 that can prove to be basically a dead end,
8 there's no realistic chance -- if there's an
9 investigation or inquiry that tries to learn
10 who's actually the holder of the money that's
11 going into the property or transaction, the fact
12 that there's a lawyer involved in some
13 circumstances may mean there's no way to find
14 out.

15 A That's true. I think it's a problem two ways
16 that, first off, suspicious transactions are
17 less likely to be flagged up prospectively or at
18 the outset because as I say, the lawyer or the
19 other professional is seen, not the underlying
20 client. And then in the unlikely event that law
21 enforcement or someone else does twig that
22 there's something suspicious about the purchase,
23 then as you say, it can make it very much harder
24 to work out who's really behind the transaction
25 and to apprehend them.

1 MR. MARTLAND: Thank you. Madam Registrar, if we
2 could go to the next page, page 4 of the report,
3 please.

4 Q And you've alluded and touched on this already,
5 Dr. Sharman, but the heading at the top there
6 "Shell Companies." What sorts of risks arise
7 from the use of shell companies and what kinds
8 of measures are viable to try to mitigate those
9 risks?

10 A Shell companies create vulnerability because you
11 have -- an expendable legal person can set up in
12 dozens of jurisdictions online very quickly for
13 perhaps a few hundred dollars and as a legal
14 person, of course, it can be the owner of the
15 property, it can hold a bank account and it can
16 act as the screen or a veil to separate and
17 conceal the underlying real owner, the
18 beneficial owner.

19 Again, this means that suspicious
20 transactions are less likely to be flagged as
21 such and secondly it means that investigations
22 can stop dead. If you find out that company A,
23 B, C is involved and then you can't find who
24 actually owns company A, B, C, then that's that
25 in terms of the investigation most often.

1 Q You make reference in that paragraph to the
2 British Columbia *Land Owner Transparency Act* as
3 an example of one of the kinds of responses that
4 we see from government. You go on to -- I
5 suppose it's a variation on Cervantes. You
6 write that the "proof of the pudding is in the
7 implementation." Could you explain what you
8 mean with that, please.

9 A I think basically for law enforcement purposes
10 but perhaps not just for law enforcement
11 purposes is that you should know the identity of
12 the real person or the real people who own
13 property in a jurisdiction, i.e., that you
14 should be able to look through a shell company
15 or trust to find out who the relevant people
16 are. I think it's positive when legislative
17 action is taken to create a registry to create
18 that level of transparency about who owns what.
19 But the story of money laundering -- well,
20 the story of anti-money laundering over the last
21 30 years has been increasingly numerous,
22 far-reaching and powerful laws that seem to have
23 a very uncertain effect on actually the
24 prevalence of money laundering or the predicate
25 crimes that give rise to that money laundering.

1 So hence the sort of recurrent scepticism about
2 the report that legislation is good but
3 enforcement is really the name of the game.

4 Q And so no matter how polished or well-conceived
5 the legislation may be, if it lacks an effective
6 enforcement or implementation, it really doesn't
7 deliver?

8 A Yes. It's -- and as I say, there's just a long
9 track record of rules that remain dead letter.
10 That was in part the inspiration for the mystery
11 shopping expedition to buy shell companies.
12 Just because you impose a speed limit doesn't
13 mean that people necessarily drive any slower;
14 just because you ban a certain class of drugs
15 does not mean that class of drugs is actually
16 unavailable.

17 Q The next heading you refer to "Assessing Current
18 Money Laundering Vulnerabilities and the
19 Effectiveness of Policy Responses." You go on
20 to offer some perspective on how British
21 Columbia and Canada are doing. What's your take
22 on how this province and this country are doing?

23 A Not well would be the short answer that I think
24 a variety of sources, including the Financial
25 Action Task Force in the evaluation review of

1 2016, but also the reports by Peter German, by
2 Schneider, by civil society and in the press.
3 Also in talking with firms who do private
4 investigations or asset recovery. Just many,
5 many different sources do tend to converge on
6 the idea that even relative to the fairly low
7 standards of anti-money laundering
8 effectiveness, that Canada is not doing well.

9 Q You have a [indiscernible] 2020 interview from
10 the head of the FATF, the Financial Action Task
11 Force, making a fairly general comment, and I'll
12 read it:

13 "Everyone is doing badly, but some are
14 doing less badly than others."

15 I take it within that you would say Canada is in
16 the doing badly as opposed to less badly.

17 A Yes, that's correct.

18 Q And in part you draw on the FATF review of
19 Canada, which I think is from 2016.

20 A Yes.

21 Q All right. You, in the last sentence in that
22 paragraph, refer to the fact that there are
23 sometimes pronouncements from, for example, the
24 Canadian government that Canada has a robust and
25 comprehensive AML and ATF, antiterrorist

1 financing, regime. You say those claims aren't
2 credible.

3 A Yes, I think on the available evidence that's a
4 very optimistic read of the situation.

5 Q Why do you say that's the case?

6 A I think that both the professional opinion of
7 people in law enforcement and private industry,
8 but also just the number of convictions that are
9 seen, the amounts of money uncovered, there just
10 seems to be very little enforcement going on and
11 it seems unlikely [sic] that there's not much
12 enforcement because there's not much money
13 laundering. It does seem like Canada has its
14 fair share of crime in British Columbia. And
15 the low level of money laundering enforcement
16 just seems to reflect a low level of
17 enforcement.

18 Q And so I suppose to go back to your example
19 about a new speed limit in car speeding. If
20 there's no police cruisers on the Autobahn to
21 enforce a speed limit, you're not going to get
22 reports of speeding cars even though they exist.
23 Is that the concept?

24 A That's true. If you don't have a lot of -- if
25 you very rarely have speeding tickets that

1 either means your population is incredibly law
2 abiding or that your system of traffic policing
3 is not very effective. And I think -- for the
4 analogy for money laundering I think it's the
5 second.

6 Q With respect to the number of convictions for
7 money laundering activity or offences, do you
8 view that as being a fair metric or measuring
9 tool to get a read on how a country is doing in
10 tackling money laundering?

11 A It's a crude one and it's a derivative one.
12 Ideally what's a more appropriate measure is to
13 say how much money laundering is going on at
14 time A and then introduce a policy and see how
15 much money laundering is going on at time B or
16 looking at the incidence of predicate crimes.
17 Does drug dealing go down as money laundering
18 becomes harder?

19 Unfortunately over the last 30 years it's
20 really proven to be impossible to find, to
21 measure money laundering directly, and so
22 there's this default to a few indicators like
23 the number of prosecutions, convictions,
24 arrests, suspicious activity reports, money
25 confiscated and so on. So they're noisier

1 signals, but I think even if you have a variety
2 of noisy signals and they're all giving you
3 pretty much the same conclusion, I think we can
4 be reasonably confident that it's -- that there
5 is a genuine problem that anti-money laundering
6 doesn't work terribly well.

7 Q On the top of the next page -- and, Madam
8 Registrar, if we could bring that up, please --
9 you give us a figure or comparison that is
10 rather startling. You say:

11 "In a 16-year period Canada has had only
12 316 money laundering convictions."

13 And in comparison to that, granted with a bigger
14 population but dealing with simply one year, the
15 year of 2017, Britain had 1,435.

16 A Yes. To see, as you say, there's a population
17 difference, but even so it's -- Britain probably
18 convicts far fewer people than the United
19 States, even per capita. But that seems a very
20 low figure for the number of money laundering
21 convictions in Canada.

22 Q You, in the next paragraph, pick up on a point
23 you were just making about how much money
24 laundering is occurring and how does one attempt
25 to measure or get a read on the quantity or

1 magnitude of that activity. Do you see that --
2 first of all, just to confirm, I take it you say
3 there isn't a clear method or reliable way to
4 get that read, that measurement?

5 A That's correct. There's no real -- there's no
6 really reliable, accurate method, even roughly,
7 for getting a handle on how much money is
8 laundered.

9 Q Do you think it is worth the effort to try to
10 come to grips or get indicators or a read on the
11 extent of the money laundering activity that's
12 occurring?

13 A I think it's worthwhile in proving the secondary
14 measures that we have, these kind of proxy
15 measures, but I'm very sceptical that we could
16 get a reliable and valid measure of money
17 laundering at the level of British Columbia or
18 Canada and still more sceptical that we could
19 ever have a reliable or valid total for global
20 money laundering.

21 Q And why is it that this is so hard to measure or
22 quantify?

1 that newer fences are created or new predicate
2 crimes are drawn into the money laundering
3 orbit. For example, tax evasion for a long
4 while was not a predicate crime for money
5 laundering and then it did become a predicate
6 crime for money laundering.

7 So just that legal change of the status of
8 tax evasion gives you the impression that the
9 amount of money laundered increased
10 substantially whereas of course it's a
11 definitional or a legal change, not a change in
12 criminal behaviour.

13 Q In the next paragraph you make the point that
14 Canada seems to have a particularly weak record
15 in prosecuting and convicting money laundering
16 and related financial crimes. What are some of
17 the reasons in your view that Canada and the
18 province of BC do fall as short as you say that
19 they do?

20 A I think in part it's legal powers, but that's
21 not the most important. I think it's often a
22 question of bureaucratic incentives. It's the
23 fact that everyone finds prosecuting financial
24 crime difficult, particularly if that has an
25 international aspect. I think that the relative

1 pay differences between working in the public
2 sector and financial investigation and the
3 private sector means that there tends to be
4 something of a drain of expertise from law
5 enforcement to the private sector.

6 And then I think there's also --
7 investigating financial crime is something that
8 takes practice. If you don't have practice at
9 it, you tend to be not very good at it. And I
10 think there's kind of a self-reinforcing
11 tendency whereby if there's not much of it going
12 on, not much investigation and prosecution of
13 complex financial crime, those skills are not
14 built up and amassed.

15 So I think there's a combination of reasons
16 that make it difficult in pretty much all
17 countries, but I think in some ways those
18 factors apply particularly in Canada.

19 Q Do you perceive there to be some misalignment in
20 Canada or other countries between the model of
21 taking the least officer investigators who are
22 familiar no doubt with numerous sorts of
23 conventional crimes, robberies, assaults, what
24 have you, drug trafficking kinds of activity,
25 but then asking those officers or expecting of

1 those officers a level of, for example,
2 accounting and financial knowledge that would be
3 needed to deal with a more complex money
4 laundering investigation?

5 A Yes, that's true. That financial investigation
6 tends to be a specialist pursuit, and if you
7 have police who are generalists, although there
8 may be many good things about having law
9 enforcement officers with a wide range of
10 skills, there is a tradeoff between breadth and
11 depth.

12 And in countering money laundering or
13 associated financial crime, it really is
14 important to build up, to keep and kind of to
15 nourish specialized expertise. And unless the
16 appropriate incentives are put in place and the
17 right institutional structures, that doesn't
18 happen. And I think Canada is one of the
19 jurisdictions that struggles with that.

20 Q And you describe that there can be, I suppose,
21 some pull to the private sector where salaries
22 may be higher and that's a dynamic where I take
23 it that can impede the ability to build up the
24 expertise on the enforcement or regulatory side.

25 A That's correct. So in, say, the National Crime

1 Agency in the UK, which has the primary but not
2 sole responsible for investigating money
3 laundering, the average salary of someone
4 entering is between 35- and 40,000 pounds a
5 year. They can walk out the door to a private
6 sector institution, perhaps like a bank, and in
7 the very next week double their salary.

8 This of course means that even if you build
9 up the expertise and you do have a cadre of
10 officers with the expertise and with the
11 experience, that keeping them may be difficult,
12 particularly at a time when there's a demand for
13 those same people in the private sector where
14 they get paid a lot more.

15 Q Does that call out for a different approach to
16 how those people are retained and remunerated if
17 they're going to be doing that work if the
18 expertise is to be built up?

19 A It does. So, again, the NCA untold here
20 actually has a vacancy of 20 investigators that
21 it would like to hire but because it tends to
22 get outbid or priced out by the private sector,
23 that a lot of the relevant people -- and this --
24 yeah, I think exactly it requires some
25 rethinking of the working conditions and the pay

1 of people who do have the expertise necessary to
2 be effective in investigating particularly
3 complex financial crime. I think it may also
4 relate to solutions beyond the state, which I
5 talk about later on in the report.

6 Q And we'll get there in due course and I
7 appreciate that comment. In the next paragraph
8 you write:

9 "Despite the common metaphor that money
10 launderers are in an 'arms race' with the
11 authorities, who face a 'whack a mole'
12 problem,' or that criminals are forced to
13 innovate, in fact the effectiveness of AML
14 in Canada and elsewhere is so low that
15 this seems unlikely to be correct."

16 I wonder if you could expand on that.

17 A For complex and international, say, again,
18 getting towards laundering the proceeds of
19 foreign corruption crimes, it's striking that in
20 reading the reports from the 1990s and then
21 reading reports from last year or the year
22 before that the basic strategies have not really
23 changed.

24 So lawyers' trust accounts, shell company,
25 real estate, that combination worked well in the

1 late 1990s. It still works pretty well today
2 each in relatively well-regulated jurisdictions
3 like Britain and the United States. I already
4 mentioned how cash can still be surprisingly
5 useful in many money laundering schemes and it
6 again gets to this point that money launderers
7 often don't have to be too original. They don't
8 have to be too innovative because the system
9 tends to have such a low level of effectiveness.

10 Q The so to the extent that some posit a sort of
11 exciting movie premise that these sophisticated
12 criminals are switching quickly into Bitcoin and
13 then transferring over to the newest thing and
14 always just one step ahead of law enforcement,
15 for example, you take issue with that and say,
16 look at the old fashioned simple method -- your
17 example, I think, is use of a lawyer to then --
18 combined with a shell company in a real estate
19 holding, those kinds of mechanisms still work
20 perfectly fine without much chance of actually
21 being detected or caught.

22 A There have been some changes and there are some
23 criminals who are quite innovative, but I think
24 they're the minority and they're the exception.
25 And it would be a mistake to think that the

1 system is so effective that most money
2 launderers are forced to be innovative and are
3 forced to abandon money laundering techniques
4 fairly quickly because they become somehow
5 obsolete or outmoded or leave the criminal
6 vulnerable to prosecution or asset recovery. In
7 most cases I don't think that's true.

8 Q In the next paragraph you make reference to the
9 Silver International E-Pirate police
10 investigation or case and say that that seems to
11 epitomize the general failure of the Canadian
12 criminal justice system to respond to such
13 threats.

14 I should probably pause first to just ask
15 what is your basis or source of knowledge about
16 that E-Pirate case, please?

17 A From the report by -- or the reports Peter
18 German and by Schneider, by the associated media
19 coverage and some other scattered references to
20 them and the other sources cited in the
21 bibliography.

22 Q And what is the -- what's your view about that
23 being a very significant and high profile case
24 that did not ultimately proceed, the impact of
25 that sort of an outcome?

1 A I think if I were a money launderer in Canada
2 and I read that, it would make we feel very
3 secure in what I was doing because even in the
4 case where most of the particulars at least seem
5 to be know that there's such a disparity between
6 the very large sums of money that seem to or
7 allege to have been laundered and very, very
8 slight penalties in non-conviction based
9 forfeiture. But it seems like if any case was
10 going to result in a meaningful sanction, it
11 really should have been cases like that. To the
12 extent it hasn't happened, then it really does
13 cast out about the effectiveness of the system
14 overall.

15 MR. MARTLAND: Madam Registrar, if we could go over
16 to the next page, please, and the heading
17 "Beneficial Ownership Regulation."

18 Q In your view, Professor Sharman, do you view the
19 concept of having effective beneficial ownership
20 regulation and perhaps registries as a necessary
21 or vital part of what's needed to combat money
22 laundering?

1 important to be able to find out who the real
2 beneficial owner is and that untraceable or
3 anonymous shell companies and other corporate
4 vehicles are one of the most important
5 mechanisms for large scale laundering and
6 associated financial crimes.

7 Q You make reference in that paragraph to the
8 British Columbia expert panel on money
9 laundering and real estate, and then also to
10 similar comments by a host of different
11 international bodies and NGOs and academics,
12 et cetera, to the same point.

13 I take it there might be a different answer
14 with respect to the question of whether these
15 are public registries or not, but at a general
16 level the concept of having effective beneficial
17 ownership registration and tracking you see as
18 an important tool. Is that a fair proposition?
19 And I welcome you to disagree, of course, if you
20 think that you don't.

21 A No, I agree. I think it's -- beneficial
22 ownership -- an effective system is absolutely
23 crucial there. I think that's been a recurring
24 theme of reports about money laundering and
25 cross-border corruption for at least the last

1 20 years.

2 I think that there are a couple of ways of
3 getting there. Registries are one way, and I'm
4 a little sceptical that they're the most
5 effective way of getting there. I tend to have
6 more faith in regulated intermediaries, but I
7 think certainly one or other of those
8 alternatives is necessary. And in the absence
9 of either, then really that's an acute point of
10 money laundering vulnerability.

11 Q If I might ask you to please expand on that
12 point, you say that registries are one way, but
13 that you actually would probably give preference
14 or emphasis to dealing with the regulatory
15 intermediaries as you describe. What does that
16 describe? And just expand on that, please.

17 A For most people setting up shell companies it's
18 not particularly those who are doing so from
19 another jurisdiction. It's not a do-it-yourself
20 affair in that they're a class of intermediaries
21 that I refer generically as corporate service
22 providers. The FATF refers to trust and
23 corporate service providers, and these may be
24 lawyers but they may not be. And these are the
25 businesses whose business it is to set up shell

1 companies and then on sell them to end users.

2 And, for example, this might involve the
3 corporate service provider, the intermediary
4 doing most of the paperwork, lodging the
5 government to see, making sure that accounts are
6 kept current but also often providing services,
7 perhaps as a nominee director, as a nominee
8 shareholder as well as perhaps secretarial
9 functions like phone or mail forwarding.

10 And those corporate service providers, I
11 think potentially, are a key point of compliance
12 in ensuring that the basic goal of corporate
13 transparency and identifying the beneficial
14 owner is met.

15 Q Out of interest, in the course of the kind of
16 investigative side of your research and work
17 professor, have you gone out shopping to see how
18 these CSPs do business, and have you touched on
19 activity in Canada, and what could you tell us
20 about that, please?

21 A Sure. It's been a mix. So first off, together
22 with two coauthors, Michael Findley and Daniel
23 Nielson, we've made over 20,000 email
24 solicitations to different corporate service
25 providers over the last decade looking for shell

1 companies, particularly whether or the not
2 corporate service providers ask for identity.

3 I also go to conferences and seminars, or at
4 least in normal times outside the pandemic, of
5 the professional associations of corporate
6 service providers. I've had 15 years of
7 interviewing them as well. And then I've
8 actually bought some shell companies from
9 corporate service providers as well, looking
10 specifically to Canada in looking at the
11 advertising material of corporate service
12 providers. Often Canadian corporate service
13 providers are not shy about one of the selling
14 points of Canadian companies is that they're
15 very useful for hiding the true identity of a
16 beneficial owner, which of course is completely
17 against what the international standards are
18 trying to promote.

19 Q Do you see the use of companies and
20 incorporation to achieve secrecy as being
21 something that is not actually tied to the
22 history or the initial reason for creating
23 limited liability through the existence of
24 companies?

25 A Yes. Definitely. I think companies --

1 obviously the vast majority of companies,
2 including shell companies, are set up for
3 legitimate and legal purposes and that companies
4 and the idea of legal personhood and limited
5 liability are an unpinning of the modern
6 economy. But I think the separation or the
7 creation of a legal person, it can be interposed
8 to hide a natural person, does mean that these
9 devices can be abused. And as I say, that's one
10 of the reasons they're one of the most common
11 mechanisms for large-scale and complex money
12 laundering.

13 Q In that last paragraph on page 6, which is on
14 display, you make reference to the law firm that
15 was at the centre of the Panama paper scandal,
16 Mossack Fonseca. And I suppose beyond looking
17 online for advertising, this is an example of a
18 reputation that seems to be out there. You
19 refer to the law firm describing Canada as a
20 potential destination for tax evasion, I
21 suppose.

22 A Yes, that's true. In material that was
23 subsequently linked -- leaked, rather, as the
24 Panama papers, Canada was one of the
25 jurisdictions that Mossack Fonseca thought was

1 particularly useful for those looking for
2 secrecy via shell companies.

3 And indeed I visited Mossack Fonseca in
4 2008, and in speaking to some of their staff in
5 Panama City, again, Canada was one of the
6 jurisdictions that came up as being -- providing
7 companies with no requirement to reveal the
8 beneficial owner and hence very useful in
9 obscuring whatever financial activity that
10 individual -- those individuals were engaged in.

11 Q Is there a quality or a feature of the -- I
12 presume, the sort of white shoe reputation of
13 countries like Canada, probably Australia, New
14 Zealand, et cetera, that actually increases the
15 prospect that those countries are being used for
16 some of this activity?

17 A Yes, exactly. It's the coincidence of a high
18 reputation and low regulation that if a criminal
19 uses a jurisdiction -- uses a shell company from
20 a jurisdiction that rightly or wrongly is
21 regarded as a high money laundering risk, then
22 the criminal is more likely to attract
23 attention. But in using a company from Canada,
24 really the criminal can get almost all good
25 things go together. It's easy to set up a

1 company, it's cheap, they can hide their
2 identity and yet they can enjoy the good
3 reputation that adheres to Canadian companies.

4 MR. MARTLAND: If we could please go over, Madam
5 Registrar, to the next page.

6 Q The heading is "Measuring Beneficial Ownership
7 Performance." I wonder if you could comment,
8 please, on how we do -- we would do best to
9 assess British Columbia and Canada's performance
10 with respect to beneficial ownership.

11 A I think one approach is to read the laws and the
12 regulations, but I think that's not the best
13 approach. I think best approach is a more
14 direct one of actually trying to set up whatever
15 corporate vehicle is of interest, companies,
16 trusts, partnerships. Or at least eliciting for
17 such vehicles in British Columbia and Canada and
18 seeing in practice, in reality, what identity,
19 if any, has to be provided before that corporate
20 vehicle can be set up.

21 And, again, it's in some sense an obvious
22 point and yet I think underappreciated that
23 there may be a big divergence between what the
24 rules say should happen and what actually does
25 happen in setting up those corporate vehicles.

1 Q And so simply, I suppose, notionally simply
2 library review or reading the laws and statutes
3 and what have you, the description, is not going
4 to be providing you with the real picture on how
5 much -- what one can get away with.

6 A That's true. So even trying to set up a company
7 in Florida, we impersonated terrorist
8 financiers. And the response from the law firm
9 in Florida was, you look like terrorists, so
10 I'll have to charge you more to do business with
11 you. It's clearly not the way the system is
12 meant to work.

13 Q In the paragraph that we have on display under
14 that heading, "Measuring Beneficial Ownership
15 Performance," you refer to the FATF mutual
16 evaluation report in the 2016 review of Canada
17 confirming an unflattering picture and that the
18 report -- this is about four lines down --
19 includes the line:

20 "Legal persons and arrangements are at
21 high risk of misuse, and that risk is not
22 mitigated."

23 Could you comment on what you see as being the
24 high risk in particular for Canada and BC?

25 A I think simply it's possible to form companies

1 and trusts and then use them to, for example,
2 buy real estate while keeping the identity of
3 the beneficial owner secret in the sense that
4 the intermediary, the corporate service provider
5 that sets up that vehicle may have no obligation
6 or at least may not fulfill the obligation to
7 find out the person that they're dealing with.

8 That means that if the company does come
9 under suspicion later on or gets into trouble,
10 then the trail stops cold. You've got company
11 ABC. You might go to a particular law firm and
12 say, you've set up company ABC; who owns it?
13 And the law firm simply says, we don't know.

14 And that's pretty much that in terms of the
15 investigation, particularly if the beneficial
16 owner is outside the jurisdiction in question.

17 Q In the next paragraph, Professor Sharman, you go
18 on to describe some of your investigative work
19 back in 2010 and then continuing with a larger
20 undertaking in 2011 to 2013. Could you please
21 give us a sense of the insights that gave you
22 about Canada in particular.

23 A The basic insight was that it's relatively easy
24 to set up a shell company in Canada without
25 revealing the identity of the person setting up

1 such a company and as I say, this is directly in
2 violation of the basic rule or principle of know
3 your customer that's meant to animate the
4 approach to beneficial ownership. And that
5 really hasn't changed too much in the period
6 from 2010 to 2020. Indeed practices like bearer
7 shares that have been abolished in stereotypical
8 tax havens like the Caymans or the British
9 Virgin Islands, I was surprised and dismayed to
10 learn that up until very recently bearer shares
11 were legal and available in Canada.

12 Q I take it the point about bearer shares is those
13 are an example of where shares in the company
14 can be held by physically the person who has the
15 share certificate as opposed to registering to
16 any particular person and hence they're easily
17 transferrable and hard to know who actually has
18 that ownership stake in the company?

19 A Exactly. Whoever holds the physical share
20 certificates owns the company. In that sense
21 they function like cash. And in the same way
22 it's easy to transfer cash without leaving any
23 trail, so the transfer of bearer shares is just
24 as easy to hide and just as difficult for law
25 enforcement to follow up.

1 Q A little lower on that page, professor, and I
2 should pause to just let you know I will be
3 speeding up a little through some other sections
4 of the report, but I'm going a little bit --
5 deliberately a little slower through this first
6 section. It's very useful for us to have this
7 evidence. You have a heading that says
8 "Bureaucratic Obstacles to AML Effectiveness."
9 You go on to talk about Canada suffering from a
10 central paradox of AML policy. Could you help
11 us understand what you see as that paradox, how
12 you describe that.

13 A I think if you read the rules on the books in
14 Canada or internationally, the anti-money
15 laundering system looks almost airtight, that
16 there's an incredibly impressive system of
17 surveillance, of incredibly powerful legal tools
18 for recovering assets. There's a network of
19 exchanging information from one country to the
20 next. And yet just commonsensically it's very
21 hard to point to a major diminution of either
22 money laundering or of the predicate crimes.

23 And again, it's impossible to get a really
24 accurate or exact read on it. But cocaine is
25 still available. People are still engaged in

1 plenty of crime. Criminals do seem to find a
2 way almost all of the time to launder the money
3 despite the presence of what ostensibly looks
4 like incredibly demanding and stringent
5 anti-money laundering laws and policies.

6 Q In the paragraph on the bottom of that page you
7 have it as being "a disconnect between strong
8 laws and weak results"?

9 A Yes.

10 Q And then you say:

11 "No doubt there are many reasons for
12 [it] ... one important factor that does
13 not get enough attention is the pattern of
14 incentives."

15 And you alluded to incentives before. What
16 sorts of incentive dynamics are at play in
17 relation in particular for prosecutors, law
18 enforcement officers?

19 A I think that often there can be an imbalance
20 whereby failures do more damage to a person's
21 career prospects than successes enhance that
22 person's career prospects. And that in law
23 enforcement organizations or amongst
24 prosecutors, if you have a system failure is
25 penalized very heavily, then it understandably

1 makes people risk averse and they may be biased
2 towards taking fairly simple cases or simply not
3 investigating very much at all. And so
4 paradoxically the informal structure of career
5 incentives may mean that law enforcement or
6 investigative bodies don't actually do much in
7 the way of investigation or enforcement.

8 Q How can that be remedied?

9 A I think partly it's a question of increasing
10 skills and experience and that gets back to some
11 of the material we discussed before. But I
12 think also there should be some thinking through
13 of policies that lead to excessive risk aversion
14 and a realization that complex money laundering
15 cases are inherently difficult and time
16 consuming and tend to be expensive. And that
17 unless you have a system that allows those sort
18 of investigations to go forward and to fail,
19 then there will just tend to be the situation
20 where they're not investigated or they're not
21 prosecuted. And unfortunately I think that
22 tends to be the place where we are now.

23 Q [Indiscernible] I wonder if some part of that
24 might be cultural within the -- whether it's a
25 prosecuting authority or regulatory or a law

1 enforcement body, that if the office culture is
2 such that one repeatedly marches into the fire
3 without concern of whether it's going to
4 necessarily go their way or not as opposed to
5 being quite risk adverse, do you see that as one
6 component of what needs to change to be more
7 engaged?

8 A I think so. I think both at the level of
9 individuals and organizations. So at the level
10 of individuals in terms of career advancement
11 and in organizations it may be in a budgetary
12 sense too so that, again, in Britain and
13 Australia and elsewhere that particularly losing
14 some sorts of cases, particularly in the civil
15 sphere, can be expensive. And of course for
16 understandable reasons public institutions are
17 put under strong pressure to stay within budget,
18 which is reasonable, but it can have perverse
19 effects, again excessive risk aversion.

20 MR. MARTLAND: Over to the next page, please, Madam
21 Registrar.

22 Q In the third paragraph there, the paragraph that
23 begins "even if avoiding investigations and
24 prosecutions altogether is impossible," you talk
25 about incentives to take simple cases. And then

1 you write in the second sentence:

2 "Money laundering cases, especially those
3 with an international aspect, are often
4 time-consuming, complicated, and have a
5 high probability of failure."

6 Could you -- I think you've done some of this,
7 but why do you see these cases particularly
8 being so fraught with uncertainty?

9 A I think partly because of the lack of skills and
10 experience that have been talked about earlier.

11 But I think even where the skills and experience
12 are there that any time you have an
13 international aspect, to me it's in some ways
14 it's a surprise to figure out how laboursome and
15 inefficient things like mutual legal assistance
16 across borders, the difficulty of getting
17 evidence from one jurisdiction to another and
18 having it be admissible, the delays that this
19 imposed, the expense that it imposes.

20 And I think, you know, particularly when you
21 move to foreign corruption cases, particularly
22 if you're facing criminals who can afford to
23 have a very high-powered legal defence team,
24 then, again, you have a lot of very skilful,
25 very well-paid lawyers on the other side who are

1 doing their damndest to kick the case out. And
2 I think that's, as I say, why these cases tend
3 to take a long time in the case of foreign
4 corruption proceeds, asset recovery, decades
5 rather than years, and why they're in some ways
6 such an unappetizing prospect for investigators
7 and for prosecutors.

8 Q In the next paragraph you talk about sentencing,
9 I suppose sentencing ranges for money laundering
10 offences, and that they can create clear
11 disincentives for prosecuting even simple cases.
12 You go on to speak about reforms or changes
13 along the lines of, for example, increasing the
14 sentences for money laundering but also making
15 them consecutive to whatever sentence arises for
16 the underlying or predicate offence. If you
17 could, please describe what sorts of change you
18 think is needed there to be more effective.

19 A I think when money laundering policy was first
20 introduced, the hope was that the money
21 laundering offence would create a trail that
22 would lead to the predicate offence, i.e., that
23 you would find the suspicious financial
24 behaviour and then you would find the underlying
25 drug dealing. I think in practice it tends to

1 be the other way around that law enforcement
2 discovers the drug dealing first and then the
3 money laundering secondarily and that where you
4 have a, say, for example, a five-year sentence
5 for the underlying predicate crime, say drug
6 trafficking, and only a three-year sentence for
7 the money laundering crime and where they're
8 served concurrently rather than consecutively,
9 prosecutors fairly understandably regard it as
10 pointless to bring a money laundering
11 prosecution and instead they concentrate their
12 efforts on the drug trafficking on.

13 Particularly if they have more experience in
14 drug trafficking cases than they do in money
15 laundering cases.

16 So, again, there's something of a
17 self-reinforcing dynamic there that
18 understandably investigators and prosecutors are
19 more comfortable with the things that they have
20 a lot of practice at and therefore are good at
21 and are correspondingly reticent to deal with
22 things that they have less practice at and as a
23 result are less good at.

24 Q If we could please go to the next page, page 9.
25 And a few -- I see there the heading "Improving

1 AML Performance." I suppose under this heading
2 you turn towards more discussion about solutions
3 and improvements.

4 Let me maybe start, if I might, with this
5 question: do you take some hope or optimism
6 from some recent reform efforts made in British
7 Columbia and Canada? Do you see those as
8 reasons to be hopeful for better headway?

9 A I'm cautiously optimistic there. I think
10 particularly the legislative changes are moving
11 in the right direction. However, again, to
12 reprise this theme, I think really 90 percent is
13 in the enforcement. And you can have very
14 strong laws and nonetheless very weak practical
15 results, and in fact relatively weak laws and
16 still more impressive results. So there's a
17 cautious optimism or at least a very tempered
18 optimism there.

19 Q And the next heading on that page you refer to
20 public registries dealing with beneficial
21 ownership. That's a proposal that we've
22 certainly heard about on a number of occasions
23 to have fully public beneficial ownership
24 registries. Is this an area underlining the
25 public part of that where you say that you may

1 differ from the conventional wisdom?

2 A I think that public registries would be better
3 than the status quo, but I don't think that
4 they're actually the best option for improving
5 beneficial ownership standards. So if it's a
6 choice of public registries or what Canada and
7 British Columbia has now, I'd go for public
8 registries. But I think an even better approach
9 is licensed and regulated intermediaries,
10 corporate service providers, who have a duty to
11 verify the beneficial owners for shell companies
12 they create.

13 I should say that those two solutions,
14 regulated intermediaries and public registries,
15 are not mutually exclusive. But I do find that
16 in certain courses the idea of public registries
17 I think has been overhyped and that the hopes
18 and expectations for them certainly outrun the
19 evidence that we have to support some of the
20 more optimistic and I think excitable claims
21 made about the effectiveness of beneficial
22 registries.

23 Q And if we could go over to the next page because
24 you make some of those points in your
25 description about it. I'll start with this

1 third paragraph and then I'll actually go back
2 up to one above it. But you write in the third
3 paragraph there:

4 "Yet despite the current popularity of
5 beneficial ownership registries there is a
6 striking lack of evidence that they do
7 actually help in deterring, detecting or
8 combating money laundering and related
9 financial crime."

10 A Yes.

11 Q And then you focus there particularly on the UK
12 there that's been a strong component of
13 certainly the public profile of the steps that
14 are taken by the UK government.

15 A That's correct. So the UK was a pioneer, and I
16 think has an evangelical approach in that it
17 thinks the whole world should have public
18 registries of beneficial ownership. Again, I
19 see some reasons to be optimistic about the
20 registries, but, again, I think the claims of
21 the British government and others are as yet not
22 supported by evidence.

23 Q And you identify in the next paragraph as one of
24 the danger with registries is the risk they
25 contain a large volume of low quantity

1 information. How does that arise?

2 A I think that there are obviously a lot of
3 companies out there. The number of corporate
4 vehicles runs into the millions in places like
5 Britain and Canada. And I think it's a somewhat
6 naive presumption that more information or more
7 data are better. And I think you don't have to
8 really reflect on it that long to think that in
9 fact more data or more information, particularly
10 where it's low quality, is not advantageous and
11 in fact may stop you seeing things.

12 There's a problem of the needle in the
13 haystack. Making the haystack better is not a
14 good way of solving that problem. In fact it
15 probably exacerbates it. Given that this
16 information is unverified, is self-declared
17 information, then there's problems about the
18 quality of it, and I think some of those
19 problems have come to light in the UK.

20 Q And appreciate it isn't as simple as turning up
21 a dial, but if one could turn up the dial on the
22 verification and maybe have regime where there's
23 enforcement action against inaccurate reporting
24 of information, does that increase the prospect
25 with higher quality data, even if there's a lot

1 of it, that that might be quite useful?

2 A Yes. But that would be a lot of work if you
3 have two or three million companies or corporate
4 vehicles as you might in Canada. That's a lot
5 of things to verify. Who does that? If it's a
6 public agency, that can be expensive. And I
7 think enforcement -- I'm a great fan of
8 enforcement. I suppose it's the quote that laws
9 without enforcement are just good advice. But
10 enforcement, particularly when you have foreign
11 beneficial owners, is quite tricky.

12 Q Going up to the top of that page, you write
13 that:

14 "The main advantage of a public (open)
15 registry, is that journalists, NGOs and
16 other private parties can use these
17 records to scrutinise suspicious
18 arrangements."

19 And you go on to identify a number of examples
20 of that, some notorious scandals, et cetera,
21 that really exemplify how that sort of public
22 sector, civic society bodies that are actually
23 being effective with public information.

24 A Yes. I think that for a surprisingly large
25 proportion and probably majority of complex

1 money laundering cases and things like the
2 laundering of foreign corruption proceeds, it is
3 things like the media or NGOs or whistle-blowers
4 that break the story and do the initial
5 investigative work. And I think those parties
6 have rightly said that their investigative
7 efforts would be bolstered if they had access to
8 information about beneficial ownership through
9 public registries.

10 Q At the bottom of that page, the heading refers
11 to, with respect to beneficial ownership,
12 regulating the CSPs. That's the theme you've
13 been describing already. You go on to refer to
14 a 2011 World Bank-UN Stolen Asset Recovery
15 Initiative report to the effect that.

16 ".... because registries are essentially
17 passive archives that receive but do not
18 check corporate information, a better
19 solution is to mandate that CSPs collect
20 beneficial ownership information."

21 If you could please describe what sort of --
22 what kinds of steps are needed to make sure that
23 CSPs are actually collecting that information,
24 what is needed to make sure that that actually
25 transpires.

1 A I think first off CSPs have to be licensed and
2 regulated. I mean, right now in places like the
3 United States or Australia, one person in a
4 garage can open a website and start selling
5 shell companies and that person just doesn't
6 appear on the regulatory landscape at all. And
7 so it's impossible to therefore impose a duty on
8 that person to collect beneficial ownership
9 information.

10 So I think, first off, CSPs have to be
11 licensed and regulated. They have to be visible
12 to the public authorities even though CSPs
13 themselves are private and for profit. And that
14 has to be a status that they can lose if they do
15 the wrong thing. And amongst the wrong things
16 is to sell companies or other corporate vehicles
17 to clients when they fail to verify the identity
18 of those clients, whether they're domestic or
19 whether they're international.

20 And of course the aim is that if a
21 company -- if a shell company falls under
22 suspicion or becoming the object of
23 investigation, law enforcement can trace it back
24 to the CSP and then crucially trace it from the
25 CSP to get the identity of the beneficial owner.

1 Q And so in that instance you're really talking
2 about moving a sphere of activity out of the
3 garage, to use that example, or the one-man
4 show, and really moving it into a regulatory
5 structure where there's meaningful understanding
6 about who's doing what and the requirement that
7 they follow certain rules.

8 A Exactly. And certain rules should apply to them
9 and, again, that they should be audited for
10 compliance and that there should be enforcement
11 for those that do the wrong thing, that fail to
12 follow the rules.

13 Q Are there examples of jurisdictions where there
14 have been effective measures taken to regulate
15 CSPs?

16 A One of the surprising and the counterintuitive
17 findings that we mentioned was that
18 jurisdictions that are classically stigmatized
19 as tax havens are in fact very strict on forcing
20 people to prove their identity before they'll
21 sell a shell company. So, again, with coauthors
22 we've set up a shell company in the British
23 Virgin Islands, a couple in the Seychelles and
24 then browsing around elsewhere, and we find that
25 those jurisdictions who do have a licensed and

1 regulated corporate service providers almost all
2 the time are the responses, we will sell you a
3 shell company only when and if you provide a
4 certified copy of the picture page of your
5 passport and some utility bills to prove that
6 you are who you say you are.

7 Q And reside at a given assess as stated?

8 A Yes.

9 MR. MARTLAND: If we could go to the next heading on
10 page 11, please, Madam Registrar.

11 Q The heading there refers to "Holding Directors
12 Accountable." What sort of measures or steps
13 are being contemplated in holding directors
14 accountable?

15 A I think that one of the problems of shell
16 companies is that the directors are often a
17 straw man, they're often a nominee or a proxy,
18 and that this is why the beneficial owner, not
19 the director, is usually the important party.
20 But I think that one indirect way of dealing
21 with the problem of shell companies is to make
22 the director actually responsible for the
23 company. And that requires that there be a
24 resident director simply because of the
25 difficulty of extraditing people.

1 So, for example, if it was a Canadian
2 corporation, if it was a Canadian company, you
3 would need it to have actually one real, live
4 breathing Canadian resident who was a director
5 of that company. And that if that company got
6 in trouble, the authorities could go to the
7 director and say, you are responsible in part
8 for this company and therefore since this
9 company has run into trouble, you've run into
10 trouble.

24 Q In the course of some of your investigative
25 work, have you observed this dynamic of a

1 willingness for people with no knowledge or
2 involvement of a company to nonetheless be
3 listed and identified as the nominee director,
4 for example?

5 A Yes, definitely. So in the shell companies that
6 I've set up that's been a standard feature. And
7 you can see it on the websites of corporate
8 service providers where it's often a tick box
9 option where there's a price for a company and
10 then for maybe another hundred dollars you can
11 add a nominee director.

12 So in setting up an English shell company,
13 there was a nominee director arrangement where
14 the nominee director sent a pre-signed but
15 undated letter of resignation, so you could
16 retroactively make them resign just by filling
17 in the date yourself and submitting it. So it's
18 a pretty standard commodity to get a nominee
19 director and it's very common and it's a
20 problem.

21 Q In the next heading you turn to lawyers and the
22 role of lawyers in money laundering. What sorts
23 of risks and vulnerabilities -- it may be beyond
24 without having you repeat ground that you've
25 already tilled, but what sorts of

1 vulnerabilities arise from lawyers and maybe
2 turning particularly to Canada?

3 A I think particularly the idea of lawyers acting
4 as financial intermediaries. They have access
5 to the financial system but also the idea of
6 legal professional privilege which may create an
7 extra layer of secrecy that makes it more
8 difficult for law enforcement to find out what's
9 going on and can often kind of warn off or deter
10 law enforcement from even looking at things
11 because law enforcement says well, there's
12 lawyers involved; there's legal professional
13 privilege; if we put enough time and effort, we
14 might be able to overcome this, but we have a
15 lot of crime to investigate and maybe we'll just
16 leave this one alone and go on and do something
17 easier.

18 So it's the function I've already described
19 in terms of access to trust accounts, their
20 gatekeeping or intermediary role in the
21 financial system and then the idea of legal
22 professional privilege.

23 Q I'd like to read, if I might, from the bottom of
24 page 11 onto this top of page 12. You write:
25 Yet given how ineffective AML regulations

1 seem to be even when they do cover
2 lawyers, for example, in Britain, this
3 conventional wisdom actually has very
4 little evidence to support it. Are
5 (regulated) British lawyers less likely to
6 be involved in money laundering than
7 (unregulated) Canadian lawyers? No one
8 knows, as there is not enough evidence to
9 say."

10 A Yeah, I think this applies particularly to the
11 idea of lawyers having to lodge suspicious
12 activity reports or Suspicious Transaction
13 Reports. That the FATF standard is that lawyers
14 in other designated non-financial businesses and
15 professions should be captured within the
16 suspicious reporting activity. They are in
17 Britain. They are not the Canada. But because
18 the system is implemented and enforced so poorly
19 in Britain, I'm not actually sure that the
20 regulated lawyers -- really the authorities get
21 much for having corralled lawyers into the
22 suspicious activity reports system. They don't
23 get many reports and they tend to be very low
24 quality.

25 Q You describe in paragraph --

1 MR. MARTLAND: Madam Registrar, if we scroll down a
2 little to page 12 near the top.

3 Q You describe in that first full paragraph that
4 these reports in the UK from lawyers can end up
5 being a waste of time in the sense that they
6 might capture a great deal of reporting -- for
7 example, the examples you have there, asbestos
8 in buildings, failure to preserve trees, that
9 those are the kind of things flagged as
10 suspicious activity?

11 A Yeah, they're the two most common, quote/unquote
12 crimes that are reported by lawyers are to do
13 with trees and building standards. Lawyers
14 regard the system as a waste of time. The
15 people who are receiving these reports also
16 regard them as generally a waste of their time.

17 Q Do you have a view with respect to the -- with
18 respect to lawyer trust accounts and whether
19 they should be limited in how they can be used?

20 A Yes, definitely. I mean, I think my scepticism
21 about including the lawyers within the
22 suspicious activity reports regime does not mean
23 that I favour completely unregulated legal
24 sector or lawyers. I do think that lawyers
25 should have a know your customer obligation and

1 that legal professional privilege should apply
2 to things like defending people in criminal
3 cases but should not really cover standard
4 commercial functions of buying a house, or
5 setting up a company and so on. And I think
6 certainly lawyers' trust accounts should be only
7 used for very narrowly specified purposes.
8 Direct -- not just as a pass-through mechanism
9 through which people can camouflage or obscure
10 financial trails.

11 Q Not of course if the lawyer respectively serves
12 as private banking for a client.

13 A Exactly, yes.

14 MR. MARTLAND: Madam Registrar, if we could go down a
15 little.

16 Q Under the heading of "Legislation" you make a
17 really interesting big picture comment with
18 respect to -- I suppose really a foundational or
19 definitional question, which is the question of
20 what is criminal in nature and what money can be
21 said to be illicit or criminal in its nature. I
22 wonder if I could just ask you to spend a few
23 minutes describing the point you're making there
24 and why you see that as a point that is rarely
25 addressed in the public discourse and the

1 literature.

2 A I think in talking about legalization, one of
3 the reasons that it's very difficult to estimate
4 how much money is laundered is as I say that the
5 goal posts are moving. That some things become
6 illegal where they previously have been illegal
7 and vice versa. And even illegal things, some
8 of them get drawn into -- some of them become
9 predicate crimes for money laundering where they
10 weren't before.

11 So if you look at public policy trends in
12 different jurisdictions, including Canada, to
13 the extent that you make things like certain
14 classes of drugs, you move them from illegal to
15 legal, to the extent that you legalize things
16 like prostitution or gambling or pornography or
17 conversely to the extent that they were legal,
18 we make them illegal, then just by moving the
19 legal goal posts, you're in some sense expanding
20 or reducing money laundering not because people
21 are behaving in any different way but simply
22 because the legal classification of that
23 behaviour have changed.

24 And in some sense the only sure way to
25 reduce money laundering, to reduce crime is to

1 take things that are illegal and make them
2 legal. And in some cases, of course, rightly
3 that would never happen, but in many other
4 public policy issues that there are reasonable
5 debates about whether certain things should be
6 illegal or legal. And standards -- legal
7 standards and community standards change over
8 time.

9 Q And I suppose as examples of those, perhaps sex
10 work, gambling and drug -- which drugs are
11 decriminalized or treated as criminal in nature,
12 those are examples of some of those areas of
13 policy decisions that different countries can do
14 different things on.

15 A Definitely. And particularly where you have
16 something like marijuana that may be one of the
17 major sources of criminal assets, to the extent
18 that you make selling marijuana legal, then at a
19 stroke one of the predicate crimes disappears
20 and the volume of money laundered has
21 correspondingly been reduced.

22 MR. MARTLAND: Thank you. Mr. Commissioner, I'm
23 about to move into the second part of this
24 report where I'll be at a little brisker pace to
25 work our way along, but I wonder if I might

1 suggest this as the point for the morning break,
2 please.

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

5 And I wonder if, Professor Sharman, you
6 could contact our IT guru just to discuss the
7 prospect of using your earphones because there
8 still is I think a bit of an echo, at least when
9 you begin your answer to Mr. Martland's
10 questions.

11 THE WITNESS: Certainly.

12 THE COMMISSIONER: Thank you.

13 THE REGISTRAR: This hearing is adjourned for a
14 15-minute recess until 9:55 a.m.

15 **(WITNESS STOOD DOWN)**

16 **(PROCEEDINGS ADJOURNED AT 9:39 A.M.)**

17 **(PROCEEDINGS RECONVENED AT 9:55 A.M.)**

18 **JASON SHARMAN, a witness**
19 **for the commission,**
20 **recalled.**

21 THE REGISTRAR: Thank you for waiting. The hearing
22 is now resumed. Mr. Commissioner.

23 THE COMMISSIONER: Thank you. Yes, Mr. Martland.
24 MR. MARTLAND: Thank you very much.

25 Professor Sharman, I'm at page 12.

1 Madam Registrar, I wonder if we might
2 continue to ploddingly work our way through the
3 report, although as I said, I'll probably speed
4 along through this next section somewhat more.

EXAMINATION BY MR. MARTLAND (continuing):

6 Q At page 12 you have under the heading of
7 "Laundering Foreign Corruption Proceeds in
8 Canada," shifting into a different part of the
9 report. I just thought it might be useful as we
10 move into that to make sure I have a proper
11 understanding about what the focus of this
12 discussion is. So maybe I'll put the
13 proposition and invite you to improve on it or
14 tell me if I've got it correctly.

I take it here in focusing on foreign
corruption proceeds, you're moving beyond the
broader question of money laundering activity
and looking at a subset of that, in particular
situations where there are -- there is money
stemming from foreign corruption moving and
being laundered into the legitimate economy. Is
that roughly accurate?

23 A Yes, that's correct.

24 Q And so I suppose notionally this isn't the
25 criminal gang or organization which is, let's

1 say, dealing hard drugs and making money from it
2 within the borders of a city or an area so much
3 as the Marcoses, the Mobutus, the many unknown
4 or lesser known people who have pilfered money
5 from a country and are then trying to
6 effectively cleanse it move it to a safe locale
7 or destination.

8 A Yes.

9 Q All right. So that's very helpful. And I
10 wonder as we move into the discussion, if you
11 could offer your perspective on the extent to
12 which you view this as a real issue of concern
13 for British Columbia and for Canada.

14 A Yeah. I certainly do regard it as an important
15 source of concern for British Columbia and for
16 Canada. I think as a multicultural society with
17 a large stable financial sector, there's
18 temptation for foreign corrupt officials to use
19 the Canadian financial system or perhaps bits of
20 it, like Canadian shell companies, to help in
21 laundering money derived from corruption
22 offences committed in other countries.

23 Q Why do you see this jurisdiction as being
24 vulnerable to that misuse?

25 A I think any -- in some ways any OECD

1 jurisdiction is vulnerable simply because
2 financial systems are set up in those countries,
3 they're designed to be attractive to overseas
4 investors, the stability of -- and
5 predictability of property rights and good
6 courts, sophisticated financial professionals
7 there. And this will attract legitimate money,
8 but unfortunately these same features will
9 attract criminal funds, particularly when as
10 we've talked about so far, there are problems in
11 the general anti-money laundering system that
12 means it's less effective than we might want.

13 MR. MARTLAND: Madam Registrar, if we could please
14 display page 13, although I don't plan to read
15 from it, but just to track along where I'm at in
16 rough terms.

17 Q Professor Sharman, could you describe what you
18 see as being the biggest threat of illicit
19 foreign corruption proceeds making their way
20 into British Columbia and Canada?

21 A I think that often the problem is in proportion
22 to migrant communities from particular
23 countries, especially if one country has a
24 relatively high incidence of corruption. And I
25 think many of the cases that have come up in

1 Canada and British Columbia but certainly in
2 other jurisdictions too have been from
3 corruption crimes committed in the People's
4 Republic of China or greater China.

5 Q You make reference to that in the first full
6 paragraph that's on display here about leaked
7 evidence. And it's a curious way in which this
8 report came about that I gather there was a
9 report which was produced by the People's Bank
10 of China in 2008 that I suppose was accidentally
11 posted and taken down, but in the period during
12 which it was existent online, it was scooped up
13 and then published and gave insights.

14 A Yes, it actually -- it won a prize. It was
15 meant to be secret, but of course it's not much
16 point winning a prize unless you can tell your
17 friends about it. And the people -- the
18 authors were very proud and put the report on
19 line and mentioned that it had got a prize, and
20 they got in trouble for this and it was removed,
21 but as you say exactly, in this brief window it
22 was copied and then translated.

23 Q And that report referred to and described, you
24 write here at the bottom of that paragraph, the
25 scale of a huge problem between 16- and 18,000

1 officials from the People's Republic of China
2 fleeing with some \$120 billion in the period of
3 '93 through '08?

4 A Yes, that's true. I mean, I should say this is
5 one particularly important source but by no
6 means the only. And certainly pronouncements
7 from many parties, including the Chinese
8 government, indicate that this problem has not
9 gone away in the interim, and they even have
10 become more serious. But I think this report is
11 almost unique in providing the Chinese
12 government's own private view of the scale of
13 the problem albeit now from a period that's
14 obviously a little more than a decade old now.

15 Q A further source that you have. About three
16 paragraphs down, you refer to the 100 most
17 wanted list of allegedly corrupt fugitive
18 officials who have left Canada [sic] and that a
19 significant number of those are actually in this
20 country, in Canada?

21 A Yeah. I think there's a great danger in
22 taking -- just because the Chinese government
23 says someone is corrupt doesn't mean that that
24 person is actually corrupt, and I think that
25 there's a danger or it's a very complicated

1 situation with authoritarian governments not
2 subject to the rule of law that a person fleeing
3 may in fact be a political dissident who's
4 labelled as a corrupt official or the person may
5 be both. They may be a dissident and corrupt.

6 But I think together with a range of
7 sources, many independent of the Chinese
8 government, that I think there is indeed a
9 genuine problem of corrupt officials fleeing
10 from China going to a range of other countries.
11 I think one of the most important destination
12 countries, both for the officials and their
13 money, is Canada.

14 Q Does that dynamic create a problem of proof in
15 the, I guess, arriving recipient jurisdiction of
16 trying to look abroad and say -- and ask the
17 question, is that -- is this person and are
18 those funds related to foreign corruption. And
19 then in turn how does -- to use Canada as the
20 example, how do officials in Canada try to
21 measure out whether the person who has arrived
22 with funds from overseas or abroad, how do we
23 know that that is genuinely someone guilty of
24 criminal deft corruption as opposed to a
25 dissident or someone who's fleeing persecution

1 who's effectively relocating their family and
2 their wealth?

3 A I think it's hard but still the basic principles
4 of anti-money laundering apply. And for
5 example, if foreigners own property or have bank
6 accounts held through corporate vehicles, then
7 that should be transparent. I think that just
8 as any other Canadian citizen engaging in, you
9 know, large scale commercial activity that
10 there's some onus for the source of wealth.

11 Where did this money come from?

12 So I'm not sure it's a matter of applying
13 extra scrutiny to those coming to Canada, but I
14 think as I say, of applying basic good
15 anti-money laundering practice that is helpful
16 in reducing the laundering of foreign corruption
17 proceeds along with many other types of
18 predicate crimes. But I do take the point that
19 it is just inherently more difficult when people
20 are coming from overseas and where their home
21 government may have political reasons to smear
22 them falsely with allegations of corruption.

23 MR. MARTLAND: If we could please go, Madam
24 Registrar, to page 14 in the middle of the page.
25 The heading there talks about "Comparative

1 Evidence on Hosting Foreign Corruption

2 Proceeds." You write:

3 "Rough rule of thumb is that countries
4 probably host illegal wealth in proportion
5 to the size of their financial sectors."

6 Who do you see as being the biggest players with
7 respect to this dynamic of being the recipient
8 jurisdiction of foreign corruption proceeds?

9 A I think the usual rule applies of guesswork and
10 a lack of certainty, but on the available
11 evidence it's seems like the United States would
12 be the biggest host country for the proceeds of
13 foreign corruption and that probably Britain and
14 Switzerland would be other leading destinations
15 to. But in some sense if you can rank financial
16 sectors in order of the legitimate wealth they
17 hold, that's probably a fair approximation of
18 the illegitimate wealth they hold also.

19 Q Do you have a view on the likely magnitude of
20 the problem for, let's say, mid-sized, to use
21 the sort of parameters of earlier discussion,
22 mid-sized OECD, English language or commonwealth
23 countries such as Australia, Canada and New
24 Zealand?

25 A I think it's substantial. And the major problem

1 is even if we don't know what proportion of
2 foreign funds flowing into the country are the
3 proceeds of corruption, that I think in Canada
4 and Australia and Britain and elsewhere, that
5 just the fact that you have really large volumes
6 of money flowing into places like the real
7 estate sector and very little scrutiny is
8 applied, very little in terms of know your
9 customer or proof of the source of wealth, then
10 at the very least this creates a very severe
11 risk and a vulnerability. Even if we can't put
12 a figure and say a certain proportion of this or
13 a certain absolute value respects the proceeds
14 of corruption.

15 Q On page 15 of your report you turn to the three
16 of the countries you just referred to, the US,
17 Britain and Switzerland. And I wonder if you
18 could sketch -- I don't need the level of detail
19 in the paper, but give us a perspective on the
20 kinds of responses or measures those
21 jurisdictions have taken to deal with this issue
22 of laundering foreign corruption proceeds.

23 A Very briefly. Up until maybe 20 years ago, they
24 did nothing. So it was *de facto*. It was
25 perfectly easy for foreign and corrupt officials

1 to move and launder their funds in those three
2 countries. And it was either perfectly legal.
3 Or even if it was illegal, then there was no
4 enforcement. So the baseline is just nothing
5 was done.

6 And over the last 20 years, more or less,
7 usually as a result of scandals, then these
8 three countries have set up dedicated units in
9 different parts of their government to try and
10 combat this problem of foreign corruption
11 proceeds being laundered in their jurisdictions.

12 Q You talk about scandals being the driver. Does
13 that pertain to this sort of description of the
14 civil society, the NGOs, the journalists
15 reporting on things that tends to be the push
16 that actually causes change?

17 A It does. And I think the exception to that
18 would be in the United States, the particular
19 role of the senate's permanent subcommittee on
20 investigations, which held a series of very
21 well-publicized hearings in the late 1990s and
22 around about the turn of the century that showed
23 that a variety of foreign corrupt heads of state
24 had been laundering and indeed were currently at
25 that time laundering funds in the United States.

1 Q In Britain you single out the example of the
2 Nigerian dictator Sani Abacha and controversy
3 and notoriety around his relocation of funds
4 taken from that country into the UK?

5 A That's true. And I think it also coincided with
6 Britain's big push on development and good
7 governance and the embarrassment the British
8 government felt on lecturing other countries
9 about their corruption problem when other
10 countries said well, it would help us to combat
11 corruption if you didn't host and launder all
12 the money or a large proportion of the money
13 generated. And that was embarrassing, coupled
14 with pressure from the media and NGOs, and hence
15 action belatedly from the British government.

16 Q You talk about Switzerland a little lower on
17 that page. And in general terms you're
18 describing that there's been momentum and change
19 over the past two decades. I'll date myself a
20 little bit if we're back to the Roger Moore area
21 of James Bond films. The bank vault in Zurich
22 is the destination of ill-gotten gains where
23 they can be held in secrecy. But is that now a
24 dated reference? Have things changed in
25 Switzerland?

1 A They have. Even in the *Casino Royale* more
2 recent James bond film, again, it's the Swiss
3 banker. But it does tend to show just like
4 stereotypes of tax havens in terms of tropical
5 islands lag the reality by a decade or two, so
6 too the stereotypes of Switzerland tend to lag
7 by a decade or two in terms of Switzerland is no
8 longer a congenial home for foreign corruption
9 proceeds.

10 Q How has that changed in Switzerland or why?

11 A I think it's changed because of bad press, both
12 abroad but also domestically in that the Swiss
13 government but also Swiss private industry,
14 including the finance industry, decided that
15 they would be better off, that really hosting
16 dirty money was not worth the reputational
17 damage. And for reasons I think just of esteem
18 as well as dollars and cents or Swiss francs,
19 that they thought they really had to clean up
20 their act.

21 They did it in two parts. The first part
22 they said corruption and criminal funds are not
23 okay but tax evasion money is and then a bit
24 later on they decided that tax evasion money
25 wasn't really worth the problem either. Partly

1 they were coerced in the second part by the
2 United States as well.

3 Q If we go to the bottom of that page, you then
4 turn your discussion to Australia and suggest
5 that Australia's experience on this may be
6 relevant to Canada in general terms. What would
7 you describe as being the situation in Australia
8 for foreign corruption proceeds?

9 A I think Australia is relevant for two reasons.
10 One in terms of the financial sector. It's
11 smaller than Canada but probably in the same
12 league as opposed to the different leagues of
13 the United States, Britain and Switzerland.
14 And the second one is the Australian
15 government has really done very little to
16 respond to even pretty well-justified worries
17 about foreign corruption proceeds making their
18 way to Australia. And unfortunately I think
19 that inaction also characterizes what's
20 happening in Canada.

21 Q Would you describe the problem in Australia as
22 being one rooted in a failure to write good laws
23 or have good systems designed or a failure to
24 implement and enforce or both?

25 A I think much more the latter. That it's, again,

1 a failure of enforcement. Australia has very
2 strong anti-money laundering laws which can be
3 applied to foreign corruption. In some ways I
4 think the laws are too strong in that they
5 endanger some fundamental liberties and
6 therefore, I mean, it's doubly unfortunate that
7 you get these very draconian laws but the
8 practical effect is very weak or almost nil when
9 it comes to foreign corruption proceeds.

10 MR. MARTLAND: If we go to page 16, please, Madam
11 Registrar.

12 Q A few -- maybe about a third of the way down,
13 the heading is "Onshore Offshore." What is
14 onshore offshore, please?

15 A So this is the idea that you can take a
16 classically onshore, quote/unquote, normal
17 jurisdiction like Britain or New Zealand or
18 Canada, one that has a reputation for probity,
19 for low corruption, for being a so-called clean
20 jurisdiction, and yet these jurisdictions can
21 offer non-residents classic secrecy products
22 like untraceable shell companies or untraceable
23 trusts in a way that in the 1990s a tax haven
24 sort of offered these products. So it's the
25 combination of products that give you a level of

1 secrecy associated with offshore but the kind of
2 clean reputation associated with onshore
3 jurisdictions.

4 Q When foreign corruption proceeds are moved into
5 shell companies that are held by or owned by
6 non-residents, what sort of issues come about
7 from that?

8 A That basically you have a very effective
9 mechanism for laundering, that even if you have,
10 say, a Russian corrupt official using a Canadian
11 company to hold a bank account in Hong Kong,
12 then that becomes a very kind of complicated
13 problem for law enforcement or investigators to
14 unpick. And, you know, you've got this --
15 ostensibly the money is held by a Canadian legal
16 person, but there's no substantive tie to
17 Canada.

18 And if investigators go to Canada and say,
19 who owns this company, then, again, they run
20 into the problem of the people who formed the
21 company simply may not have collected
22 information on the beneficial owner and hence
23 the beneficial owner has preserved his or her
24 illicit wealth.

25 Q You make reference near the bottom of that page

1 to New Zealand shell companies in particular.

2 What's the picture with respect to New Zealand
3 shell companies?

4 A New Zealand for, I think, the best reasons,
5 decided to make foreign companies cheap and easy
6 and very unbureaucratic as part of the
7 deregulatory drive, and that makes sense. And
8 as I referenced before, most companies are used
9 for entirely legitimate purposes, so it's only
10 fair that it should be easy and cheap to form
11 them.

12 But this made it very easy for foreign
13 criminals to get hold of untraceable New Zealand
14 companies that were set up very quickly, very
15 cheaply without having to divulge their
16 identity. And again, they enjoyed the
17 reputation of the country that often comes
18 number one in Transparency International
19 corruption perceptions index. And then you had
20 problems of New Zealand companies repeatedly
21 surfacing in scandals that ostensibly had
22 nothing to do with New Zealand -- illegal arms
23 trade between Iran and North Korea, Mexican drug
24 cartels, theft of hundreds of millions of
25 dollars from the Russian tax system -- and these

1 were nevertheless linked back to New Zealand
2 shell companies and New Zealand corporate
3 service providers.

4 Q At the bottom of page 17 or near the bottom of
5 page 17, you say:

6 "The ultimate 'onshore offshore'
7 jurisdiction might be the United States."
8 Why is that the case?

9 A I think because, again, in practice the United
10 States has been incredibly lax in applying or
11 enforcing or even legislating beneficial
12 ownership standards, that -- again, as late as
13 23rd of December last year, I bought -- I set up
14 a US shell company, and I did not have to
15 provide any ID to do so, which is in violation
16 of international standards. And US corporate
17 service providers are very, very open on their
18 websites. They say, we sell secrecy; we don't
19 care who you are or what you're doing, we'll
20 provide you a shell company, a nominee director,
21 we'll wrap it in legal professional privilege
22 for you.

23 So it's -- at the same time as the United
24 States in some ways sets itself up as the
25 paragon of virtue in financial standards, there

1 is this incredible mismatch whereby in practice,
2 if you want to buy an anonymous shell company,
3 probably your first stop should be the United
4 States.

5 Q The United States also seems to have a dynamic
6 of, I suppose, competition between states that
7 sort of race to the bottom. I know in some
8 earlier evidence from Oliver Bullough he
9 described North Dakota as not an obvious
10 destination but one with heightened secrecy
11 protections around company ownership as an
12 example. Is that a dynamic -- I'm interested if
13 that sort of dynamic within a country, within
14 provinces or states or cantons, I suppose, of a
15 country. Do you see that dynamic elsewhere
16 where there can be this sort of competition for
17 the most salable, the highest level of secrecy,
18 I suppose?

19 A I think some of this competition, there
20 certainly has been some of that in the United
21 States. So places like North Dakota, also
22 Nevada have deliberately tried to undercut or
23 provide even more secrecy than other traditional
24 states that have got a lot of the business, like
25 Delaware. I think the evidence for this kind of

1 competition, there might be some in terms of the
2 tax regimes previously of cantons in
3 Switzerland.

4 I think the other complication, though, is
5 that it's given the federal government, the US
6 federal government slightly a "get out of jail
7 free" card and when the United States federal
8 government is rightly criticized for the poor
9 performance of the United States, the US can
10 say, constitutionally that's a state
11 responsibility and so we the federal government
12 can't really do much about it.

13 Q On page 18 at the top you make the comment that:

14 "Due to Canada's weak beneficial ownership
15 standards -- "

16 It's just at the very top of that page.

17 "-- it may be in danger of becoming the
18 'new New Zealand.'?

19 What kind of fear are you describing, and what's
20 the basis for that fear?

21 A I think, again, it's this combination of a high
22 reputation for probity and low standards and lax
23 enforcement, which can give criminals the best
24 of both worlds in that sense. I think this is
25 more than just a potential vulnerability in that

1 I gave some examples there of Canadian corporate
2 service providers explicitly saying this and
3 marketing the jurisdiction. And indeed when I
4 set up my US shell companies in December of
5 2020, one of the products that I noticed that US
6 providers were selling were Canadian and British
7 Columbian corporate vehicles.

8 In talking with private investigative
9 agencies in London after I finished the report,
10 they talked about the so-called snow washing and
11 that they were seeing an increased use of
12 Canadian corporate vehicles in complex
13 cross-border financial crime. Exactly, again,
14 that you can get offshore levels of -- what were
15 previously seen as offshore levels of secrecy
16 from an onshore jurisdiction that is regarded as
17 pretty innocuous.

18 Q The next heading you refer to the comparative
19 approaches to countering the laundering of
20 foreign corruption proceeds and in particular
21 talk about the US, the UK and Switzerland and
22 the fact that they created specialized agencies,
23 each differing in form and each detailed in your
24 report.

25 You go on at the end of the first paragraph

1 under that subheading to say:

8 How vital do you see the specialized agency with
9 this focus as being?

10 A I think general improvements to the anti-money
11 laundering system would also improve the
12 situation with foreign corruption funds, and to
13 that extent things like improving the beneficial
14 ownership system or improving the expertise of
15 law enforcement in general. But I think if
16 Canada is really interested in deterring and
17 recovering and repatriating the proceeds of
18 foreign corruption, it's really going to need
19 something like a specialized unit because the
20 set of skills here are fairly specialized.

21 But I think even more than that, there are
22 so many incentives against investigating this
23 sort of thing unless it's the specific job of
24 some agency or some section which has been
25 explicitly tasked and mandated to pursue this

1 mission.

2 Q And if we were turning to that question about
3 what sort of specialized agency would be needed
4 for British Columbia and Canada, do you have
5 thoughts about what the mandate should be? And
6 equally in terms of staffing, expertise and
7 institutional structure and design, I suppose,
8 thoughts on how that's best put forward?

9 A I think the US example has been very successful.
10 They have had an anti-kleptocracy task force
11 that's got strong bipartisan support from the
12 time of George W. Bush onwards. It's a joint
13 venture of the Department of Justice and the
14 FBI. And it contains a mix of investigators and
15 prosecutors as well who have a lot of
16 international linkages and are very adept at
17 using asset recovery strategies, particularly
18 non-conviction based forfeiture approaches to
19 asset recovery, who have got -- who have had
20 very strong political support as well
21 consistently over time.

22 And so this has really built up a career
23 path and that you've had people working in these
24 agencies now for over 10 years who are very
25 skilled and very good at what they do.

1 Q Discussing the non-conviction-based asset
2 forfeiture options that may be available in the
3 US, is the so-called geographic targeting order
4 an example of that?

5 A Yeah. I mean, that's more of a way of getting
6 transparency than actually confiscating assets,
7 but it reflects the fact that the US, as with
8 any other jurisdictions, including Canada, have
9 found that real estate, again, is a common place
10 to launder money, not just for domestic
11 criminals but for foreign corruption proceeds as
12 well.

13 And the geographic targeting orders are a
14 way to try and flush out that money to make it
15 more visible in such a way as it can then be
16 attacked. But also of course to deter dirty
17 money coming into the system in the first place.

18 MR. MARTLAND: Madam Registrar, if you could bring up
19 page 19 in the middle.

20 Q You've got quite a string here in that paragraph
21 that begins "in the United States." You refer
22 to forfeiture cases brought by the US Department
23 of Justice against a whole unsavoury list of
24 foreign kleptocrats there. I take it that's
25 been a fairly muscular effort on the civil

1 forfeiture litigation front.

2 A It has, and it's been quite successful in, as I
3 say, recovering roughly a billion and a half US
4 dollars so far, and I think with more in the
5 works.

6 Q On page 20 you have a heading that turns to the
7 question of potential Canadian responses to
8 laundering -- to the laundering of foreign
9 corruption proceeds. Appreciating what you set
10 out in your evidence as well as in the report,
11 do you see particular measures as being what you
12 would identify as being the top of the list for
13 consideration in British Columbia and Canada?

14 A I think -- I mean, largely a specialized unit
15 and then general improvements and things like
16 beneficial ownership regulation and the
17 transparency of property ownership. And then
18 coupled with people generating the expertise,
19 having the practice in using the various asset
20 recovery strategies, particularly those suited
21 to the return of assets that are generated by
22 predicate crimes that have occurred abroad.

23 Q At the bottom of page 20, the start of the
24 paragraph, you write:

25 "This unit --"

1 Talking here about a specialized unit that would
2 come into play in the Canadian jurisdiction.

3 "This unit should specialise not just in
4 attacking corrupt officials and their
5 wealth, but also the Canadian banks and
6 enablers who, through sins of omission or
7 commission, assist in the local laundering
8 process."

9 Why do you see that as an important feature or
10 part of the work?

11 A I think it's mainly important in terms of
12 building up a deterrent function. I mean, just
13 like forming a shell company is not a
14 do-it-yourself affair. If you're a foreign
15 kleptocrat or corrupt official, you really need
16 a lot of professional help to launder your
17 money, maybe wittingly or unwittingly by a whole
18 range of professions in the foreign
19 jurisdiction. Some combination of bankers,
20 lawyers, accountants, real estate agents.

21 And most of these or really all of these
22 should have a duty to know their customer, to
23 screen out dirty money. And I think one of the
24 approaches that is badly underutilized is
25 even -- say, in Britain, even when foreign

1 corruption funds are detected, then action might
2 be taken against those funds and perhaps against
3 the foreign official. Nigerian governors have
4 been popular. But the hard questions that
5 should be asked of the banks that handled that
6 money, the real estate agents that handle
7 transactions or the lawyers that help structure
8 the affairs, those are not being asked.

9 And I think really we're not going to solve
10 the problem by convicting or even confiscating
11 the assets of all the foreign corrupt officials
12 because there are simply too many. And that if
13 we want to achieve a big change, then we need to
14 make jurisdictions, OECD jurisdictions
15 inhospitable to foreign corruption funds and we
16 do that by making intermediaries and
17 professionals actually doing a thorough job of
18 knowing their customer and screening out dirty
19 money before it enters the system.

20 Q On page 22 -- and, Madam Registrar, if you could
21 bring that up, please. -- you have -- at the
22 very last part of this section 2 of the report,
23 the heading is "Countering Corruption Beyond the
24 State." You refer -- this comes back to this
25 point about the influence of civil society,

1 journalists, NGOs, other reporters. I'll maybe
2 just -- but this is a bit of a general question.
3 It seems like with respect to money laundering
4 in contradistinction to other areas of crime, a
5 lot of the time the activity is being uncovered
6 by journalists, by NGOs, as opposed to police
7 officers.

8 Now, if someone learned that bank robberies
9 were being reported [sic] by TV reporters, not
10 police officers that would seem striking. Is
11 there something about the nature of this
12 activity in particular that means that the
13 police are not necessarily observing it or
14 having it reported to them and yet where they're
15 motivated and paying attention, and there
16 reporters and activists do it?

17 A Partly it may be -- reflect the problem earlier
18 of rather than too little information, too much,
19 that the suspicious activity reports or
20 Suspicious Transaction Reports, as they're
21 variously know. I mean, often there are
22 thousands of hundred of thousands or millions of
23 these. And so a financial intelligence unit,
24 there's simply so much noise that it's very hard
25 to pick up the signal.

1 But then I think it's all the other features
2 as well as these are difficult and complicated
3 cases to investigate where the professional and
4 personal reward might be very uncertain. And so
5 as a result, they go uninvestigated. And it may
6 be particularly if you have powerful parties who
7 are -- you know, who stand to lose or stand to
8 be damaged, whether it's powerful local banks,
9 whether it's powerful foreign officials, that
10 often mean that governments or law enforcement
11 agencies just find it a lot easier to not
12 investigate and not ask awkward questions than
13 to investigate.

14 Q At the bottom of that page the heading is
15 "Confiscating Illegal Assets," and then onto the
16 next page, page 23, you write:

17 "The single most important aim of AML
18 policy is to 'take the profit out of
19 crime,' thereby reducing the incidence of
20 predicate offences. To this end, it is
21 essential there be an effective system for
22 confiscating the proceeds of crime."

23 What you turn to in this portion is a discussion
24 about different options for going about
25 confiscation. You say in the next paragraph

1 that the discussion concentrates on
2 non-conviction-based forfeiture and civil asset
3 recovery, confiscation-based on tax powers and
4 UWOs, or unexplained wealth orders.

5 So to work through those topics one by one,
6 first the NCBF measures. You've touched on this
7 before. What do you see as the need and the
8 role for NCBF, non-conviction based forfeiture,
9 and in particular thinking about the situation
10 in British Columbia and Canada?

11 A I think that -- I mean, criminal prosecution
12 has -- particularly when it comes to large
13 complex financial crime that cross borders, the
14 criminal prosecution has just proved to be
15 really, really difficult. And this that has
16 created pressure, first in the context of
17 dealing with the drug trade and the later with
18 other sorts of money laundering crimes so to
19 make it easier for authorities to get criminals'
20 money and that there have been this constant
21 kind of innovation. And I think one of the
22 major ones is non-conviction-based forfeiture
23 and practices then being diffused
24 internationally as best practice by the
25 Financial Action Task Force.

1 I think though -- I mean, there is a danger
2 that if people give up on criminal prosecution
3 too much, then this does undermine the deterrent
4 effect that the criminal justice system is meant
5 to have towards criminals. And I think that
6 there are some signs that in some ways
7 abandoning the field in terms of criminal
8 prosecution in Canada or in British Columbia and
9 just relying on non-conviction-based forfeiture,
10 especially when it's of relatively modest
11 amounts such as in the Silver International
12 E-Pirate cases, then a non-conviction-based
13 forfeiture is a useful tool, but it should be
14 only one of several that include criminal
15 prosecution.

16 Q Is it the case for the non-conviction-based
17 forfeiture that the same dynamic is at play of
18 not merely needing to have the right statute and
19 the right agency or structure but also an
20 effectiveness to the work that they do and the
21 cases they bring?

22 A Yeah. I think Australia is a cautionary tale
23 here that has very strong conviction powers for
24 law enforcement, both at the subnational state
25 level and at the federal level. And the

1 Australian Federal Police has been so
2 apprehensive about losing a court case to do
3 with its confiscation powers that it's never
4 actually used those confiscation powers, even
5 though they were introduced more than 10 years
6 ago.

7 And even on the kind of more -- even on the
8 more modest or everyday confiscation powers that
9 people have to practice these, law enforcement
10 have to practice using these to make them
11 effective. And unless there's measures taken
12 for that experience to accrue and be maintained
13 and developed, then it doesn't matter what
14 legislation you have; law enforcement are not
15 going to use it.

16 Q If we could go to page 24 and the heading "Civil
17 Cases: A British Example." How do you see
18 civil cases being employed and what is the
19 British example?

20 A I think -- I mean, if there's a basic problem
21 of -- for complex financial crimes, you need
22 advanced legal and accounting skills. And most
23 of these legal and accounting skills are in the
24 private sector, not in the public sector, partly
25 as a result of pay differentials, partly as a

1 result of other things.

2 And so governments and purely private
3 parties have therefore moved into --
4 increasingly into the civil law system to try to
5 recover assets. And I think the -- that there
6 are some current examples before the British
7 court, for example, to do with allegations of
8 corruption in Mozambique where you can use the
9 civil law system and use the expertise in the
10 private sector to actually recover assets in a
11 much more effective way than can be done through
12 traditional criminal justice measures.

13 Q In that discussion about the civil cases in
14 Britain, you refer to judges -- and this is not
15 unfamiliar to some Canadian legal proceedings --
16 have followed the route of using an irresistible
17 inference that the assets represent the proceeds
18 of foreign corruption. So not proof beyond a
19 reasonable doubt of proof of the predicate crime
20 but rather reaching a moment in the evidence
21 that that irresistible inference allows for the
22 conclusion to be reached.

23 A Yeah. One of the problems that -- one of the
24 high hurdles that US cases have had to overcome
25 is that, you might say commonsensically, if an

1 official has \$50,000 annual salary and
2 \$200 million worth of assets, they got a lot of
3 explaining to do between -- the mismatch between
4 their legitimate earnings and the amount of
5 assets they hold.

6 And judges in the United States have been
7 very careful to say that really nothing can be
8 drawn from that, and that if assets are to be
9 confiscated, then law enforcement or whoever
10 [indiscernible] must link a specific asset.
11 Whereas, as you say, Britain has more forgiving
12 standards where the judge is able to say look,
13 given the mismatch between legitimate wealth and
14 this huge amount of excess wealth, given the
15 credible allegations of corruption, given the
16 lack of evidence from the other side explaining
17 how this wealth was legitimately earned, then
18 the judge can give a -- favour confiscation.

19 Q Lower on that page you turn to unexplained
20 wealth orders. It's a concept we have some --
21 we've heard some evidence about and you've given
22 a good definition there in that paragraph, so I
23 won't ask you to offer that in your answer now.
24 But do you have -- I wonder if you'd say that
25 your view on unexplained wealth orders may be an

area where you depart somewhat from some of the prevailing or conventional wisdom as to their effectiveness or utility?

4 A Yeah, I think that particularly their
5 effectiveness in dealing with foreign crimes,
6 particularly laundering the proceeds of foreign
7 corruption, I think they're not the silver
8 bullet that they're made out to be. And I think
9 that's important because that was the main
10 rationale for introducing unexplained wealth
11 orders in Britain. And again, it's kind of got
12 a lot of play in the policy community that these
13 are the things that everybody should now have.

14 And I think there are at least some reasons
15 for scepticism that it's early days but
16 unexplained wealth orders have had some hits but
17 also some misses in the UK. And I think that in
18 fact their impact is likely to be much more
19 modest than their proponents suggest and that
20 they're really in fact more useful for tackling
21 domestic crime than for tackling cross-border
22 crime.

23 Q Today the -- at least from a news reader's point
24 of view it doesn't seem there's been extensive
25 use of them in the number of cases brought in

1 the UK. It seems to be, I assume, strategic
2 litigation to only pursue certain cases.

3 A Yeah, it does seem, again, as this risk
4 aversion. I mean, in talking to the NCA, they
5 seem to think that there are probably between
6 100 and 200 cases that they potentially could
7 bring, but they've only really brought two. So
8 at this current rate, it's going to take them
9 about a century to get through the cases that
10 they've now dealt with. Of course not helped by
11 the fact that they actually lost the last one in
12 2020.

13 So even if they were starting with the
14 easiest possible cases, which I think they
15 probably were, the fact that the first one
16 probably didn't need an unexplained wealth
17 order, they could have gone straight to
18 confiscation and the fact that the second one
19 has failed, again, I think really gives pause to
20 the thought. I mean, in fairness it may be a
21 matter of practice, but again, I think they're a
22 bit overhyped.

23 Q At the bottom of that page you raise a number of
24 concerns or problems that arise in relation to
25 these unexplained wealth orders, including among

1 that list extending the power of the state,
2 reducing citizens' right and freedoms, the
3 possibility as a result they're unconstitutional
4 in given jurisdictions, that they can arguably
5 weaken presumption of innocence and property
6 rights and the right to silence.

7 So those are some of the reasons that you
8 don't ascribe to the view that these are a
9 silver bullet solution.

10 A I think there's two responses. One is they just
11 might not work that well, pragmatically. And
12 secondly, even if they did work well, there may
13 be a cost that I think at the very least is
14 worth thinking about in terms of fundamental
15 rights and freedoms. I mean, it's one thing to
16 say the presumption of innocence is really a
17 nuisance and in inconvenient when you are trying
18 to put people in jail or confiscate their
19 assets. And of course the answer is well,
20 that's the point. That's -- you know, it should
21 be hard to put people in jail; it should be hard
22 to take away people's assets.

23 So the presumption that anything that makes
24 asset confiscation easier must be a good thing I
25 think is a pretty unbalanced way of looking at

1 the problem.

2 Q To the extent that -- whether it's explained
3 wealth orders or other asset forfeiture
4 mechanisms, they broaden out significantly. Do
5 you run into, I suppose to use a fishing
6 analogy, a bycatch problem or an overcatch
7 problem that you may sweep up innocent
8 situations into the net of that recapture
9 regime?

10 A Yes. I think it's also for some law enforcement
11 agencies that have then been incentivized, for
12 example, and the idea of keeping a certain
13 proportion of the funds that they confiscate
14 through non-conviction based forfeiture, it's
15 had this rather perverse effect where law
16 enforcement go after the most profitable sort of
17 cases for them in a very direct sense rather
18 than those that may maximize the public good.
19 Even to the extent of people -- individual law
20 enforcement agents saying, that's a nice car
21 that drug dealer has; I wouldn't mind. So you
22 do -- you want to in some ways incentivize law
23 enforcement officers but not too much.

24 Q No. On page 26 this moves into the last topic
25 from your paper and for my questions,

1 Dr. Sharman, and you've been very patient as
2 I've fumbled around with them. This heading
3 referred to "A Neglected Alternative: Using the
4 Tax System." What are you describing here with
5 respect to looking to tax recovery avenues?

6 A I think with the growth of the international
7 anti-money laundering system there's also been a
8 parallel growth in the international system to
9 counter tax evasion. But despite their kind of
10 common or at least complimentary aims and the
11 means that they use, there's surprisingly little
12 dialogue between the anti-money laundering
13 policy community and the tax policy community.

14 And I think for all of the failings of the
15 Australian system, which are long and numerous,
16 that fact one of the work-arounds that's proven
17 valuable in Australia to act as a functional
18 substitute for conviction powers is using the
19 tax system. And I think this can be used as a
20 substitute in combatting domestic financial
21 crime but also international financial crime as
22 well.

23 And this is not only in terms of bringing
24 charges like tax evasion, but also raising tax
25 assessments as again kind of a functional

1 substitute for confiscating illicit wealth.

2 Q On page 27 in the middle you make -- you give
3 some description of that.

4 MR. MARTLAND: Madam Registrar, if we could go to
5 page 27, the third paragraph, please.

At the start of that paragraph you write:

7 "In practice, in challenging cases where
8 law enforcement officials are convinced
9 that an individual has significant wealth
0 derived from crime, it is left to the
1 Australian Tax Office to raise a tax
2 assessment against the individual."

13 I take it that's really a description of this
14 sort of practical way forward that engages the
15 tax mechanism. How does that tax assessment
16 process work and how does that play out?

17 A I think often that the police or law enforcement
18 either forms suspicions or have a criminal case
19 that fails. And maybe one of the options they
20 consider is these confiscation powers which they
21 don't use through lack of practice or through
22 worries about being -- having them overturned in
23 the courts and because there's unusually a
24 fairly close relationship between the anti-money
25 laundering law enforcement and tax community in

1 Australia. And the sense is that it's
2 easier to use provisions of the tax code to say
3 look, we think you are understating your income
4 drastically and we think that you've been
5 understating your income perhaps for several
6 years into the past, so we're going to raise the
7 tax assessment against you of X million dollars.

8 And that's an administrative measure that's
9 quite easy to do. The evidentiary threshold is
10 quite low. And if the taxpayer wants to contest
11 this, then they have to go through a series of
12 procedures and through the courts. So really
13 the onus is on the taxpayer to prove the tax
14 office wrong rather than the tax office having
15 to prove anything beyond a legal doubt.

16 So, again, it's this idea of trying to get
17 around the difficulty of proving things beyond a
18 reasonable doubt and reversing the onus of
19 proof.

20 Q In Canada through jurisprudence there are
21 certain restrictions or ground rules around how
22 information may or may not be able to move
23 between regulatory tax enforce -- tax functions
24 and on the other hand a more criminal law sort
25 of avenue. Do you think that -- do you have a

1 view on or are you able to comment on whether
2 the Australian model is one that could be
3 transposed to Canada?

4 A I think there would be some potential for
5 learning but also some limits there, and I think
6 you've accurately identified the main one. But
7 in some ways Australia is unusual in that tax
8 and anti-money laundering information are
9 routinely shared on an administrative basis and
10 there's very little of a wall between them.

11 I think that that creates some benefits but
12 also some big costs. The kind of idea of the
13 authority saying, we know you're guilty, but we
14 can't prove it, but we're going to take away
15 your money anyway, obviously pushed to its
16 logical extreme that has some worries. And
17 someone who takes privacy rights seriously, so I
18 think although it's inconvenient in some ways,
19 that it's entirely appropriate that Canada puts
20 at least some levels of barrier that, you know,
21 severely regulates and limits the exchange of
22 information between the tax authorities and
23 other parts of the government, including law
24 enforcement.

25 MR. MARTLAND: Dr. Sharman, thank you.

3 THE COMMISSIONER: Thank you, Mr. Martland.

4 I'll now call on Ms. Addario-Berry for the
5 province, who has been allocated 15 minutes.
6 And I should -- just before you commence,
7 Ms. Addario-Berry.

14 THE WITNESS: I'm content with going ahead. Thank
15 you.

16 THE COMMISSIONER: Thank you. Yes, Ms. Addario-Berry.
17 MS. ADDARIO-BERRY: Thank you, Mr. Commissioner.

18 EXAMINATION BY MS. ADDARIO-BERRY:

19 O Professor Sharman, can you hear me okay?

20 A Yes.

21 MS. ADDARIO-BERRY: Thank you. Madam Registrar,
22 could you please pull up page 10 of
23

24 Q I'm going to read from the third paragraph down
25 which starts with:

1 "Yet despite the current popularity of
2 beneficial ownership registries there is a
3 striking lack of evidence that they do
4 actually help in deterring, detecting or
5 combating money laundering and related
6 financial crime."

7 My question, Dr. Sharman, is what sort of
8 evidence would you like to see coming out of
9 beneficial ownership registries to show that
10 they are in fact deterring, detecting or
11 combatting money laundering?

12 A I think it would be great if there were cases
13 that were happening now in the UK where police
14 would come out and say, and a big important part
15 of us being able to break this case is because
16 we looked at the persons of significant control
17 registry and that gave us really useful
18 information. Or if we had NGOs, like Global
19 Witness or Transparency International or
20 investigative journalists, who say, you know,
21 we've got wind of this big corruption case, this
22 big money laundering case, and the way that we
23 did that is by joining the dots by using
24 beneficial ownership information that came from
25 the registry.

1 In fact, we haven't really seen any cases
2 either formally from the government sector or
3 informally from the NGOs from civil society or
4 from investigative journalists. And, you know,
5 after a few years you would expect that.

6 The other thing that makes me sceptical is
7 that there's been, first off, the NGOs that
8 campaigned for registries have said that they're
9 not particularly well administered or funded,
10 and finally that there's been very low
11 enforcement in terms of people who just don't
12 fill out the forms that they should or fill them
13 out in an obviously untrue manner.

14 Q Okay. So it's not so much that you're looking
15 for particular statistics to be reviewed in a
16 given jurisdiction before and after a registry
17 is created?

18 A I think it would be nice if you could have
19 things like this year we've had 1,000
20 enforcement actions from people who made false
21 declarations in terms of the beneficial
22 ownership registry. Or if there was some
23 notable increase in the number of convictions or
24 asset confiscation that were taken against shell
25 companies or those who use them, again, on the

1 basis directly or indirectly of information held
2 in that registry. But it's been a few years and
3 at least to my knowledge we haven't seen that so
4 far.

5 Q Okay. And a little further down, 1.3.2, the
6 bullet heading refers to "regulating corporative
7 service providers," and I've noticed in the
8 report there's -- it mentions both corporative
9 service providers and corporate service
10 providers. Could you clarify, are those
11 referring to the same sort of entity?

12 A Sure. Yeah, sorry. That should be corporate
13 service providers, which the FATF refers to as
14 trust and corporate service providers.

15 Q And in your research and review in preparing
16 this report, did you come across unregulated
17 corporate service providers either in British
18 Columbia or Canada more generally?

19 A Yeah. My impression is that there's not a
20 requirement and indeed I think it was from the
21 sources of 2018, Canada finance minister's --
22 finance ministry report that in fact CSPs are
23 not regulated in Canada or at least they may
24 only be caught incidentally through other
25 things. CSPs is kind of an umbrella term. They

1 may be law firms. They may be accountancy
2 firms. They may be someone in their garage. So
3 they might be caught under a different part of
4 the regulatory regime, but to my knowledge
5 corporate service providers as a class, TCSPs in
6 their Financial Action Task Force, are not
7 regulated.

8 MS. ADDARIO-BERRY: Okay. Madam Registrar, could you
9 please scroll down a little further to page 11.
10 That's great. Thank you.

11 Q And under the heading of "Holding Directors
12 Accountable," which you discussed in your
13 evidence earlier, you mentioned another
14 complimentary solution is to require at least
15 one local resident director for any given
16 company. Are you referring to the British
17 Columbia *Business Corporations Act* provisions
18 that there are no residency requirements for
19 directors and how this can be helpful for
20 foreign parties that are wishing to incorporate
21 in Canada?

22 A This was actually a general comment that a
23 common problem is that people who ostensibly
24 should have some responsibility for the company,
25 i.e. the director, in practice can escape this.

1 And to hold directors accountable they really
2 need to be in the same jurisdiction as the
3 company that's been formed, which may seem like
4 it's obvious, but in fact it's very common to
5 have either corporate directors, so one company
6 as the director of another company or
7 non-resident directors. And that basically
8 means that they're beyond the reach of the law.

14 Q Okay. And so I take it from your answer you
15 didn't engage in any sort of extensive review of
16 the provisions of the British Columbia *Business*
17 *Corporations Act* or the federal equivalent of
18 that?

19 A That's correct, yeah. It's a conclusion based
20 on evidence from other jurisdictions.

21 Q Okay. Can we turn to page 18 of your report,
22 please. So I'm just looking at the last
23 sentence in the top paragraph:

24 "As noted earlier, trusts are often
25 unregistered, and as such completely below

6 From your previous answer I think I know the
7 answer to this, but when you're referring to
8 nominee partners, is this more of a general
9 statement or have you seen this in the Canadian
10 context being used?

11 A Yeah, you're right. And that's a general
12 statement based particularly on the Scottish
13 experience. The only point where it would
14 specifically relate to British Columbia is in
15 looking at corporate service providers' websites
16 in December of last year that Canadian limited
17 partnerships and limited liability partnerships
18 are being sold by at least some corporate
19 service providers as a secrecy product.

20 Q Okay. Thank you. My next question relates to
21 page 24 of this report. And, again, in the top
22 section starting from "there are many stories of
23 the accidental or deliberate misuse." Sorry,
24 perhaps I should mention I'm now discussing the
25 non-conviction based forfeiture topic. And it

1 says:

2 "There are many stories of the accidental
3 or deliberate misuse of confiscation
4 powers by law enforcement, particularly in
5 the [US], but those writing on
6 confiscation implicitly seem to assume
7 that these miscarriages of justice are a
8 price worth paying."

9 Have you seen any of these sort of miscarriages
10 of justice in confiscation in the Canadian
11 context?

12 A No, I haven't. I think partly because they're
13 comparatively rare, but no.

14 Q Okay. And moving on a little further on the
15 same page under the "Unexplained Wealth Orders
16 and Illicit Enrichment Laws." In your evidence
17 earlier we covered this somewhat, but you said
18 that unexplained wealth orders arguably weaken
19 the presumption of innocence, property rights
20 and the right to silence. And I think you'll
21 agree with me that the presumption of innocence
22 is a concept that typically is applied to
23 criminal cases?

24 A Yeah. I mean, unexplained wealth orders and
25 illicit enrichment are often run together, so I

1 mentioned the islands, Britain and Australia
2 have related but distinct things, and I think
3 for both and the policy problem that the British
4 government was looking to solve is, again,
5 frustration with a criminal threshold of proving
6 things beyond a reasonable doubt.

7 And so the idea is we want to take away your
8 house and doing it through the criminal justice
9 system with a presumption of innocence is very
10 difficult, so we're going to do it some other
11 way. And some other way would be through
12 illicit enrichment laws or through an
13 unexplained wealth provision. So yes, certainly
14 the presumption of innocence is for criminal
15 justice, but, again, that's the frustration with
16 that rule is the reason that we have illicit
17 enrichment laws or unexplained wealth orders.

18 Q Okay. And I have a general question regarding
19 your report. Where you have cited media
20 articles in your footnotes, is it fair to say
21 that you didn't undertake a second level review
22 of source documentation but rather you accepted
23 the veracity of facts that were reported in
24 articles at their face value?

25 A I checked on the veracity of things reported in

1 the press if they fit the pattern that other
2 literature had shown. So, for example, the FATF
3 mutual evaluation report on Canada in 2016, that
4 if there was a strong claim in the press about a
5 particular failing of the Canadian anti-money
6 laundering system, I think definitely in most
7 cases, perhaps even all, I made sure that that
8 was supported by or in agreement with other
9 sorts of documents.

10 As I say, either from the Canadian
11 government, from international reviews, from my
12 academic work or other policy work I've done.
13 But you're right that I didn't go back and check
14 original court transcripts to do with -- from
15 those media stories. That's correct.

16 Q Okay. And my final question is just related to
17 the mystery shopping expedition that you
18 mentioned and your purchasing of anonymous shell
19 companies, setting them up, corresponding bank
20 accounts. And I was wondering after you have
21 undertaken this particular exercise, do you
22 typically dissolve these companies, or do you
23 undertake further sort of experiments or
24 investigations with the corporate vehicles that
25 you create through your research and

1 investigation?

2 A It varies. So for the earlier ones they're
3 dissolved. There has to be -- for companies
4 there's an annual upkeep fee. So even though
5 it's relatively small, to the extent that I'm
6 not using them anymore, I just allow them to
7 lapse. Mostly what I'm interested in is can I
8 set them up anonymously. I'm currently doing
9 the some work, again with the Mike Findlay and
10 Dan Nielson, so we have some -- currently some
11 companies set up there because we're currently
12 using them in an academic research. But, again,
13 once we finish that research, we would allow
14 them to lapse and dissolve them.

15 MS. ADDARIO-BERRY: Thank you, professor. Those are
16 my questions.

17 THE WITNESS: Thank you.

18 THE COMMISSIONER: Thank you, Ms. Addario-Berry.

19 We'll call now on Ms. Gardner on behalf of
20 Canada, who has been allocated 15 minutes.

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

22 EXAMINATION BY MS. GARDNER:

Q Professor Sharman, can you hear me okay?

24 A Yes, thank you.

25 MS. GARDNER: Thank you. Madam Registrar, if we

1 could pull up page 1 of Professor Sharman's
2 report, please. That's perfect. Thank you.

3 Q So I just want to take you back to the second
4 paragraph here. And I think you may recall
5 Mr. Martland asking you some questions about the
6 end of this paragraph. And in my notes I have
7 that you very fairly acknowledged that you don't
8 purport to speak authoritatively about details
9 of the Canadian regime. Is that -- do you
10 recall giving that evidence?

11 A Yes.

12 Q And Mr. Martland took you through your rather
13 lengthy CV and I don't think we need to go there
14 again, but is it fair to say that you haven't
15 previously published any peer-reviewed articles
16 that focus specifically on the Canadian
17 anti-money laundering regime?

18 A Yes, I've referred to the Canadian example in
19 some of the things I published, but I haven't
20 had any dedicated publication that's been
21 specifically on the Canadian money laundering
22 system. That's fair.

23 Q And then in this final sentence of paragraph 2
24 here you note that a similarly qualified
25 Canadian expert will know the local

1 circumstances better. So I take it there that
2 you're indicating that, you know, to the extent
3 there may be some disagreement about specific
4 details of the regime, you would defer to a
5 Canadian expert on those points?

6 A Yes.

7 Q Okay. Now, I just have a few questions for you.
8 I just want to go through a few portions of your
9 report with you to ensure there is some clarity
10 about a few specific aspects of the Canadian
11 regime.

12 MS. GARDNER: So, Madam Registrar, if we could turn
13 to page 2, please.

14 Q Now, Mr. Martland took you to this portion as
15 well. I'm looking here at the section titled
16 "Cash." And in the middle of that section
17 you'll recall he took you to this portion where
18 you're describing the Canadian policy of often
19 returning undeclared cash to those detected
20 carrying it through the border with very small
21 penalties. And you say that to an outsider this
22 policy seems like an incredible favour to
23 international money launderers.

24 So I'm interested here in two concepts, the
25 concept of undeclared cash and the concept of

1 proceeds of crime or what we might call illicit
2 cash. I take it you'd agree that those terms
3 aren't synonymous?

4 A Yes.

5 Q There are reasons that a traveller might fail to
6 declare legitimate cash?

7 A I think in many jurisdictions the failure to
8 declare it makes those proceeds illicit. They
9 become illicit simply by the fact of not having
10 been declared.

11 Q But they are necessarily prior to that failure
12 to declare proceeds of crime or cash otherwise
13 derived from criminality?

14 A Yeah, they only become criminal at the point
15 they're not disclosed. Yes, I agree.

16 Q And then I just want to ensure there's some
17 clarity about how the Canadian regime treats
18 those two concepts we've just discussed, the
19 undeclared cash and the illicit cash or
20 suspected proceeds of crime.

21 So is it your understanding that the regime
22 treats those two differently?

23 A No. I mean, undeclared -- I mean the FATF
24 standards pretty clearly mandate that people
25 transporting a certain amount of money across

1 borders must declare them and that countries
2 should introduce legislation to that effect.
3 And merely the act of transferring money across
4 borders is in and of itself a crime and in some
5 jurisdictions in fact the most common kind of
6 money laundering conviction is undeclared wealth
7 with no connection to any other crime. The
8 entire money laundering prosecution merely rests
9 on the fact the predicate crime is the failure
10 to disclose.

11 Q Right. Okay. So that was my inexact question.
12 I meant to ask is it your understanding that the
13 Canadian cross-border currency seizure regime
14 treats undeclared cash differently from how it
15 treats suspected proceeds of crime?

16 A Yeah, drawing on the 2016 FATF report. Yes.

17 Q And so you would agree, then, that if a border
18 officer suspects that a traveller may have
19 proceeds of crime that they're carrying across
20 the border, that that's treated differently than
21 unreported cash more generally?

22 A Again, I'm not really -- if you have \$20,000 in
23 a suitcase, if you haven't declared it, it
24 doesn't matter where that money comes from. It
25 becomes criminal. And if it's found in the

1 border, again, FATF standard is pretty
2 long-standing. *Ipsso facto* it becomes criminal
3 by the failure to disclose. There's no need to
4 work out the origins of it.

5 Q Okay. I think that it might be helpful --
6 you've cited in your report a 2018 Department of
7 Finance report titled "Reviewing Canada's
8 Anti-Money Laundering and Anti-terrorist
9 Financing Regime."

10 MS. GARDNER: Madam Registrar, if we could pull up
11 that report, please.

12 Q And I'm not sure if you have it before you in
13 hard copy, but it's also on the screen here. Do
14 you recognize this as the report you reviewed
15 and cited in your report?

16 A Yes.

17 MS. GARDNER: Mr. Commissioner, I might ask this be
18 marked as an exhibit at this stage as I will ask
19 a few questions about it and I would hate to
20 neglect to mark it later on.

21 THE COMMISSIONER: All right. That's fine. I
22 just -- has that been marked already,
23 Mr. Martland? Do you know?

24 MR. MARTLAND: I was just trying a search of our list
25 of exhibits and I don't see the word "reviewing"

1 in the list of exhibits, so I think the answer
2 is no.

3 THE COMMISSIONER: All right. We'll mark this as the
4 next exhibit, then. Thank you.

5 THE REGISTRAR: Exhibit 960.

6 **EXHIBIT 960: Reviewing Canada's Anti-Money**
7 **Laundering and Anti-Terrorist Financing Regime -**
8 **February 7, 2018**

9 MS. GARDNER: And, Madam Registrar, if we could go to
10 page 37 of this report. And if you'd scroll
11 down for me, please. Thank you.

12 Q So I'm just looking at the final paragraph under
13 "Border Enforcement" that appears to be
14 providing a description of the Canadian
15 cross-border currency reporting regime, seizure
16 regime. And it's saying here:

17 "Part 2 also enables the CBSA --"
18 Which above you'll see Canada Border Services
19 Agency.

20 "-- to perform searches where there are
21 reasonable grounds to suspect a person or
22 entity is carrying unreported currency or
23 monetary instruments. Unreported amounts
24 may be seized by the CBSA or forfeited
25 where there are reasonable grounds to

1 suspect that they are proceeds of crime or
2 funds for terrorist financing."

3 So coming back to that distinction, then, would
4 you agree that where there are reasonable
5 grounds to believe that the funds are proceeds
6 of crime, that those funds are forfeited, which
7 means to say they are not returned to the
8 traveller?

9 A I can say that for this -- that yes, that would
10 apply, but it also seems to leave out or create
11 a presumption that the onus is on the law
12 enforcement to say that you have to have a
13 reasonable suspicion of the criminal origins of
14 these funds.

Now, if this is the law that applies in Canada, that's fine, but it's not in line with the FATF standards, which I think the FATF commented on. And it seems as I say, a very gentle system that one that tends to favour the money launderers. I certainly wouldn't argue that if you say that's the law in Canada, I would certainly defer, but it doesn't seem in line with the FATF standards and it does seem a way that to -- that it makes life easier for money launderers.

1 MS. GARDNER: Okay. Madam Registrar, if we could
2 return to professor Sharman's report, please.

3 I'll ask you to turn to page 6 of that report.

4 THE WITNESS: Sorry, could I just make one other
5 point on the previous one?

6 MS. GARDNER:

7 Q Sure. Yeah.

8 A I was just looking at the footnote. So in the
9 executive summary of the Financial Action Task
10 Force 2016 mutual evaluation report, the
11 majority of cash seized by the Canada Border
12 Services Agency is returned to the traveller at
13 the border. That's for falsely and undeclared
14 cross-border movements of currency. And bearer
15 negotiable instruments.

16 Again, I stick by the report -- by the
17 comment in the report. That's not a good
18 situation if you have most of the money that's
19 been falsely or not declared returned to the
20 traveller. It doesn't seem like a good idea to
21 the FATF; it doesn't seem like a good idea to
22 me.

23 Q Okay. Thank you. So looking at page 6 of your
24 report. Just looking here at the second
25 paragraph under "Beneficial Ownership"

1 Regulation." I believe Mr. Martland may have
2 taken you to this general area. And you say:
3 "Completely at odds with the most basic
4 rules of AML, Canada allowed bearer share
5 companies (where whoever holds the
6 physical share certificates owns the
7 company) until very recently, meaning that
8 ownership is completely untraceable."

9 MS. GARDNER: And now, Madam Registrar, I apologize,
10 as I don't see it up there anymore, but I was
11 hoping to return again to that Department of
12 Finance report we marked previously. Thank you.
13 And if we could turn to page 18 of that report.
14 If you could scroll down to the bottom for me,
15 please.

16 Q So I'm just looking here at the final paragraph
17 on this page, halfway down, it says:
18 "Jurisdiction over incorporation is shared
19 between the federal and provincial/
20 territorial governments with approximately
21 9% of corporations in Canada established
22 under the federal *Canada Business*
23 *Corporations Act.*"

24 MS. GARDNER: And then, Madam Registrar, if we could
25 just scroll to the next page.

1 Q Which I believe was the citation you provided,
2 professor, for your report, page 19. So the
3 second to last paragraph here starting with the
4 "the minister." states:

19 Appreciating that was a lot of reading out loud.
20 What I'm interested in here is the portion in
21 the middle about the *CBCA*. So is it your
22 understanding that the federal legislation, the
23 *CBCA*, has required that shares be in registered
24 in form since 1975?

25 A The way for me was the provincial. so, for

1 example, there was reference to making best
2 available efforts to get rid of bearer shares at
3 the provincial level by the 1st of July 2019.

4 Now, even assuming that best available
5 efforts means that bearer shares were all gone
6 by 2019, which I think is an optimistic reading
7 of best efforts, 2019 is incredibly late to get
8 rid of bearer shares, that in -- again, classic
9 tax have jurisdictions got rid of 20 years
10 earlier. But, you know, saying for argument's
11 sake that bearer shares are now completely gone
12 at the federal and the provincial level,
13 assuming it happened in 2019 or thereabouts, I
14 think the point still stands that's very late.
15 Other jurisdictions got in big, big trouble for
16 having bearer shares 20 years ago.

17 Q But again, just for clarity, then, at the
18 federal level, shares have been required to be
19 in registered form since 1975, not 2019?

20 A That's not much consolation if you can get a
21 Manitoba or other company in bearer shares.
22 Again, just like the United States federal
23 government tends to say oh, well, beneficial
24 ownership, that's a state problem. And
25 technically they're correct, but that's really

1 not much consolation if your jurisdiction is
2 being used to launder money either from
3 criminals at home or abroad. And so too while
4 it's good that the Canadian federal government
5 has got rid of bearer shares, that's not really
6 any consolation if they're freely available at
7 the provincial level.

8 MS. GARDNER: Okay. Thank you. And I'll just return
9 briefly for my final few questions here to your
10 report, please.

14 Q And I'm just looking at the bottom of the first
15 paragraph under the "Neglected Alternative:
16 Using the Tax System" heading where you say:
17 "While there is some *de facto* co-operation
18 between Canada Revenue and Canadian law
19 enforcement in confiscating criminal
20 assets, such instances seem to be much
21 more the exception than the rule."

22 And again, I think you've already quite fairly
23 acknowledged this and you weren't able to come
24 to Canada while preparing your report to conduct
25 interviews and that sort of thing, but for

1 clarity you've never been employed by the Canada
2 Revenue Agency or Canadian law enforcement
3 agencies; is that correct?

4 A That's correct.

5 Q And you'd agree, then, you don't have direct
6 knowledge of the work those agencies do or the
7 manner in which they undertake that work; is
8 that correct?

9 A Actually, the only interview I did do was with a
10 former member of the Canada revenue authority.

11 So I'm not sure if that counts. I certainly --
12 that doesn't mean I worked for the Canada
13 Revenue, but the only interview I did was
14 someone from the CRA, a former member of the
15 CRA. You could fairly say that one person is a
16 fairly limited basis to draw that on. It's also
17 a point from the FATF report.

18 Q Okay. But you didn't, for example, receive any
19 statistical information from Canada Revenue
20 Agency or Canadian law enforcement agencies
21 about the extent to which they might collaborate
22 or share information between them; is that fair?

23 A I got those statistics from the 2016 FATF
24 report. But you're correct, not directly from
25 those agencies.

1 Q So you don't have -- we could call it systemic
2 knowledge, systematic knowledge about the level
3 of cooperation between those parties?

4 A Well, yes, in the sense that from the documents
5 from the Canadian government and that's exactly
6 the kind of knowledge that mutual evaluation
7 reports by the FATF -- that's what they are is
8 to provide systematic knowledge about the
9 anti-money laundering system. One aspect of
10 that is information sharing between different
11 bits of the government. Now, 2016 is a while
12 ago. Maybe things have changed in the last five
13 years.

14 MS. GARDNER: Okay. Those are all my questions.

15 Thank you. Thank you, Mr. Commissioner.

16 THE WITNESS: Thanks.

17 THE COMMISSIONER: Thank you, Ms. Gardner.

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

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

22 **EXAMINATION BY MS. HERBST:**

23 Q And thank you, Professor Sharman. I just have a
24 few questions to start off with in terms of your
25 CV, although I don't think we need to turn to

1 it. Now, I don't mean to suggest by asking that
2 everyone should have a law degree, but just to
3 confirm. You don't have a law degree yourself?

4 A That's correct.

Q And you haven't worked at a law office?

6 A That's correct.

7 Q And Ms. Gardner's questions I think touched on
8 this somewhat, but whether within Canada or
9 outside, you haven't worked as a police officer?

10 A Correct.

11 Q And apart from any consultancy work you may have
12 done for banks, you have not been a bank
13 employee yourself?

14 A That's correct.

15 Q So no day-to-day work in a bank branch, for
16 example?

17 A No.

18 Q No. Just geographically, I believe Mr. Martland
19 touched on this, but when running through your
20 CV he mentioned Griffith University. I believe
21 that's in Queensland?

22 A Yes.

23 Q All right. Now, also in going through your CV
24 Mr. Martland touched on a book as -- I think he
25 mentioned it might have been potentially

relevant. It's called *Outsourcing Empire: How Company-States Shaped [sic] the Modern World*.

3 Now, that's a book where I understand you trace
4 corporate imperialism back to the English and
5 Dutch, East India companies and so on. Is that
6 related to money laundering in some way, or ...

7 A No, it's got the Hudson Bay Company in there,
8 but that's the only Canadian link, and it's not
9 a money laundering link.

10 Q All right. And those companies, I take it,
11 aren't shell companies either. They may have
12 other attributes but may not have been
13 desirable, but that's not among them?

14 A That's correct.

15 Q All right. Now, you noted with -- when speaking
16 with Mr. Martland that understandably you didn't
17 travel to Canada during the pandemic and did
18 almost nothing by way of interviews. And this
19 came up with Ms. Gardner as well.

20 Could you just confirm. You didn't
21 interview any representative of a Canadian law
22 society in preparing your report?

23 A That's correct.

24 Q Now, you noted very fairly in your testimony and
25 on page 1 of your report that with respect to

1 Canada specifically, you looked at a number of
2 specific sources like Dr. German's report and
3 you set them out in your bibliography.

4 In reviewing your bibliography I didn't see
5 any references to, for example, the websites of
6 Canadian regulators, like gaming regulators or
7 accounting regulators or law societies. Is it
8 fair to say you didn't consult those websites
9 directly when preparing your report?

10 A I didn't list every website I looked at in the
11 bibliography, but I think yes, the substance of
12 your question is fair. I didn't look at those
13 websites. But as I say, I've looked at the
14 websites of various corporate service providers
15 and other things. So the bibliography is not
16 exhaustive for the websites, but I didn't look
17 at the websites of those bodies you mentioned.

18 Q Okay. And I take from that as well that you
19 didn't review -- and I'm not suggesting you
20 should have. I know your report was very broad.
21 You didn't review specifically the rules or
22 guidelines that those regulators might have in
23 place in relation to anti-money laundering?

24 A Only as far as they were covered in the
25 documents that were referenced in the

1 bibliography. So you're right that it wasn't
2 specific reports by the organizations but those
3 measures were covered in quite a few of the
4 sources in the bibliography.

5 Q Right. So to the extent that Dr. German might
6 have mentioned something, you would have read it
7 in Dr. German's report, for example?

8 A It was often more a case of the documents put
9 out by the Canadian government, the Financial
10 Action Task Force mutual evaluation review,
11 sometimes the policy-ish documents brought out
12 by think tanks. And yes, you're right,
13 sometimes in the reports by Peter German and
14 Professor Schneider.

15 Q Okay. Now, I think this is the case, and I just
16 wanted to confirm, when Mr. Martland was asking
17 you some questions about lawyers and trust
18 accounts, he suggested to you something about
19 trust accounts perhaps proving a dead end to
20 investigations. And you gave a more nuanced
21 answer, I'd say.

22 You're not specifically aware of through
23 personal knowledge of any specific investigation
24 in British Columbia having been stymied by a
25 trust account, are you?

5 Q Right.

6 A Apologies.

7 Q No, no, not at all. But it would be something
8 you read as opposed to something you'd
9 know through personal knowledge.

10 A Yes, that's true.

11 Q Okay. Now, in one of your responses to
12 Mr. Martland in your direct testimony you
13 suggested that the real estate sector in BC was
14 lightly regulated, and I think you extended that
15 characterization to ancillary services in which
16 you included lawyers. Am I correct that when
17 you're referring to light regulation you are
18 referring to the fact that the Canadian statute,
19 the *Proceeds of Crime (Money Laundering)* and
20 *Terrorist Financing Act* doesn't directly require
21 reporting of -- from lawyers, for example?

22 A I think that's part of it, but it's also that
23 there's no obligation, as I understand it, to
24 know your customer procedures as well.

25 So I think the suspicious transaction

1 reporting is part of it, but not the whole lot.

2 In some way not even the most important part.

3 Q And when you're saying no obligation, that's
4 again looping back to the federal statutory
5 regime. You're not suggesting, for example,
6 that there's no know-your-customer obligations
7 as a matter of law society regulation?

8 A Yeah, that's true.

9 Q Okay. Now, you referred in your testimony to a
10 law firm in Florida that gave quite a startling
11 response it sounded like to an inquiry that you
12 or one of your colleagues might have made about
13 whether they'd become involved in something that
14 had a terrorism-related taint to it. Is -- am I
15 right, that's part of the study that you
16 recounted in your *Global Shell Games:*
17 *Experiments in Transnational Relations, Crime*
18 *and Terrorism* book from 2014?

19 A That's correct, yes.

20 Q And that's I believe -- during the break I was
21 able to find the quote where the Florida firm
22 said, and my apologies for some -- well,
23 language that may suggest profanity here. Your
24 stated purpose -- and this is in responding to
25 an email inquiry from a supposed Pakistani

1 source.

2 "Your stated purpose could well be a front
3 for funding terrorism and who the --"
4 F with asterisks.

5 "... would get involved in that?"

6 And then suggesting they would for 5,000 a
7 month. And then:

8 "Your previous message and this one are
9 meaningless crap. Get a clue. Just how
10 stupid do you think we are?"

11 That's the kind of -- it's ambiguous as you
12 said, but it's perhaps suggestive that they
13 would have been prepared to engage in something
14 had they been paid enough.

15 A Yeah, well, in both -- that was the gist of
16 their response, but in the rest around it they
17 said in no uncertain terms that for \$5,000 a
18 month as they indicated something could be done.

19 Q Got it.

20 A Even though they had accurately perceived that
21 we are a terrorism finance risk.

22 Q Now, I've gone through, at least insofar as I
23 could during the break, looking for references
24 to Canada in the book. And I don't see any
25 quotations like that that are attributed to a

1 Canadian law firm. Is that fair?

2 A Yes.

3 Q And certainly you're not aware of any law firm
4 in BC that has said that it would welcome
5 terrorism-related business?

6 A Not so far as I'm aware, no.

7 MS. HERBST: All right. Thank you. I'm just
8 checking through my notes, but ...

9 Thank you, Professor Sharman. Those are my
10 questions. Thank you.

11 THE WITNESS: Thank you.

12 THE COMMISSIONER: Thank you, Ms. Herbst.

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

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

17 EXAMINATION BY MR. USHER:

18 Q Firstly, thank you Dr. Sharman, for your
19 evidence today. In section 2 of your report you
20 discussed -- and Mr. Martland brought to your --
21 went through this report from China called "A
22 Study on Methods of Transferring Assets Outside
23 of China By Chinese Corruptors and Monitoring
24 Methods For This Problem." This is footnote 57
25 of page 13 of your report.

4 MR. USHER: So, Mr. Commissioner, I would -- the
5 witness did provide me with that document, and I
6 did provide it to the commission and I just
7 wanted to seek leave to put the document to the
8 witness and enter that study as an exhibit.

9 THE COMMISSION: All right. Mr. Martland, any
10 objection to that?

11 MR. MARTLAND: No. Given the way it arose with
12 Mr. Usher getting it from the witness as he did
13 and the witness having been the source of it,
14 unless he has a concern about answering
15 questions with it, I don't see any difficulty
16 with that. Thank you.

17 THE COMMISSIONER: All right. Thank you.

18 MR. USHER: Thank you, Mr. Commissioner. If I could
19 ask -- the report came as a Word doc file. I
20 provided it to commission both as that and then
21 saved as an Acrobat portable document format, or
22 PDF file. Perhaps if I could ask the registrar
23 to put up the PDF format of that document for
24 the witness to have a look at. Thank you, Madam
25 Registrar.

1 Q And, Dr. Sharman, is this -- do you recognize
2 this as the report that you sent to me?

3 A Yes.

4 MR. USHER: May this be marked as an exhibit, then.

5 THE COMMISSIONER: Very well that will be 961.

6 THE REGISTRAR: Exhibit 961.

7 **EXHIBIT 961: A Study on Methods of Transferring**
8 **Assets Outside China by Chinese Corruptors and**
9 **Monitoring Methods for this Problem - Bank of**
10 **China - June 2008**

11 MR. USHER: Thank you.

12 Q Just some general questions on this report,
13 Dr. Sharman. I take it it starts with a
14 reference to -- hello?

15 MR. MARTLAND: Mr. Usher, you were Zoom-bombed. But
16 carry on.

17 MR. USHER: Thank you. Okay.

18 Q Dr. Sharman, this report starts on the first
19 couple pages with your news story. But if we
20 could skip down to the actual start of the
21 report, so a few pages in, that goes to page --
22 well it actually is page 9 of the report it
23 actually starts. This is the beginning of the
24 report.

25 Dr. Sharman I just simply wanted to ask you

1 to tell us a bit about the provenance of this
2 document. In other words, how did you come
3 to -- I know you've referenced this, for
4 example, in one of your books. And what's your
5 confidence in both the document and the accuracy
6 of the translation?

7 A I first became aware of it through speaking to
8 law enforcement people in Australia and the
9 United States who let me know that and I think
10 actually provided -- if I remember rightly,
11 someone from the Australian Federal Police
12 provided me with the document. I mean, as you
13 can tell it's not actually a secret document.
14 Well, it was originally intended to be such, but
15 it escaped and was leaked into the public
16 domain. But I got it via law enforcement.

17 Q Okay. And obviously you read through it
18 carefully and it's a lengthy report. Could you
19 tell us what the significance of this is to your
20 work on looking at money laundering and in
21 particular the risks of corruption -- corrupt
22 money coming in, and then how this -- that is
23 of -- would be of significance to the
24 commission's work in this area.

25 A Sure. I mean, as I indicated, just because the

1 Chinese government says something, even in a
2 secret report, doesn't mean it's necessarily
3 true. But I think both given the kind of
4 provenance of the report, the fact that it was
5 endorsed by -- that certainly the Chinese
6 government rather sheepishly admitted it was
7 genuine. As you see, the translation is pretty
8 rough and ready. It's not an official one.

9 I think together with -- I mean the value
10 of this is it puts some figures on how big a
11 problem the Chinese government thinks that it
12 has, which may be too large or too small, but
13 even if they're in the ballpark it's a huge
14 problem.

15 And I think less than the individual cases
16 what's useful for my research is an indication
17 of the kind of countries where a lot of this
18 money and a lot of the officials end up. And
19 also the common kinds of patterns that are used
20 to move money across borders. But I think
21 certainly given the provenance of the report
22 it's only prudent to rely on independent
23 confirming sources as well. Again, just because
24 the Chinese government says someone is corrupt
25 it ain't necessarily so.

1 And I think the relevance for the work of
2 the commission is that given that the second
3 priority I was told -- was asked to write about
4 in the report was proceeds of foreign corruption
5 and given that this document names Canada as the
6 second most common jurisdiction for hosting
7 corrupt -- for hosting corrupt proceeds stolen
8 are from China, that's why it seemed relevant to
9 me.

10 MR. USHER: Thank you. That's very helpful.

11 And I don't need this document displayed any
12 further, thank you, Madam Registrar.

13 Q Just with some general questions, then. In your
14 report you talk about money in lawyers' trust
15 accounts is in essence hidden or not visible to
16 financial institutions. I'm trying to think of
17 what's your understanding of how money is
18 deposited into and where it is sent from law
19 firm trust accounts. This would apply to notary
20 accounts because as you may or may not know,
21 notaries public in BC do real estate
22 transactions in the same way that law firms do.

23 But, you know, where does that money come
24 from? And you talk about it being hidden, but
25 what's your sense of where does it come from and

1 where does it go to?

2 A I think some of the best studies of this that
3 have been influential for me that have been
4 those by -- first off indictments by the US
5 Department of Justice to deal with the
6 anti-kleptocracy task force that I mentioned,
7 and secondly the reports by the US Senate
8 permanent subcommittee on investigations, the
9 2010 one. And those reports kind of obviously
10 deal with United States, but not just the United
11 States. Some of those indictments have to do
12 with law firms in other countries, including
13 Britain.

14 And so for the detailed knowledge of
15 particular cases like Teodoro and Obiang of
16 Equatorial Guinea, there's a very kind of
17 detailed coverage in those reports which maybe
18 go to a couple hundreds of pages about really
19 the transaction number of which bank, which
20 account, which shell company it went into, which
21 lawyer's trust account and then how that was
22 used to buy real estate, for example, in Malibu,
23 California, but also in London, not so far away
24 from where I live.

25 Q If I suggested to you that all deposits and

1 withdrawals into lawyer and notary public trust
2 accounts in BC are done by bank instruments such
3 as cheques, bank drafts, electronic transfers
4 that have been done by domestic international
5 systems, so all money comes in in one of those
6 forms, all money leaves in one of those forms?

7 A Sure. Yeah.

8 Q And the banks in fact keep copies and record of
9 all of those documents?

10 A That's not really terribly helpful because
11 foreign wire transfers often include incomplete
12 information that doesn't identify the sender or
13 the sender may be identified as a corporate
14 vehicle where the beneficial owner is not known.
15 So I agree you're going to have an electronic
16 trail there from the bank, but it's going to
17 leave out the elements that you really need as
18 an investigator or at least it could
19 potentially, I should say, and that's where the
20 risk arising.

21 Q Right. And so in your work obviously you've
22 raised an important point. Have you looked at
23 one of the tools for all of this as the
24 improvement of the record keeping and the
25 records that go with international transfers? I

1 know the SWIFT has been working on what's called
2 20022. I don't know if -- are you familiar with
3 that?

4 A I think the -- one of the -- it's the same
5 problem writ large. SWIFT has standards about
6 what should happen. People should not send
7 incomplete wire transfers that do not properly
8 identify the sender. Unfortunately people
9 routinely send wire transfers that do not
10 identify the sender and the money nevertheless
11 gets through. So certainly I'm aware that SWIFT
12 and others are working on the problem and have
13 passed rules that say full information should be
14 included. But just because you pass a rule
15 doesn't mean that people behave in accord with
16 that rule.

17 Q Yeah. So the good ideas don't necessarily
18 translate into actual action.

19 A Exactly.

20 Q Thank you. In your report you recommend the
21 broader use of tax enforcement. In your
22 research have you found any jurisdiction that
23 requires direct reporting to income tax
24 authorities of the acquisition and disposition
25 of real estate and perhaps it even requires that

1 reporting as a prerequisite for the registration
2 of a land transaction?

3 A I think sometimes in some tax authorities that
4 it's particularly acquisition of foreign
5 property that can have a specific reporting
6 instance as well. Just like hosting -- just
7 like opening a foreign bank account, it can be
8 mandatory to report that on an income tax
9 declaration for some countries. So that was
10 more the aspect that I was looking at in terms
11 of foreign owners of property in Canada or
12 whatever jurisdiction you might be talking
13 about.

14 Q Thank you. Just one last question. I see my
15 time is running here. In your research in
16 setting up companies did you attempt to set up a
17 BC company using the online registration systems
18 provided by our provincial government?

19 A Not yet, but that might be the next one.

20 MR. USHER: Well, good luck with that.

21 THE WITNESS: Thank you.

22 MR. USHER: And feel free to make any one of us a
23 director.

24 THE WITNESS: Thank you.

25 MR. USHER: Thanks, Dr. Sharman. That's all my

1 questions.

2 THE COMMISSIONER: Thank you, Mr. Usher.

3 I'll now call on Mr. Duong on behalf of the
4 BC Lottery Corporation, who has been allocated
5 five minutes.

6 MR. DUONG: Thank you, Mr. Commissioner. I should
7 fess up that that was me who did the
8 Zoom-bombing. My apologies, Professor Sharman.
9 I have no questions for the witness.

10 THE COMMISSIONER: Thank you, Mr. Duong. And we did
11 see your name, so your identity was not hidden.

12 MR. MARTLAND: Transparency, Mr. Commissioner.
13 That's part of the transparency regime here.

14 THE COMMISSIONER: It is indeed. Thank you. All
15 right. Thank you.

16 Ms. Tweedie on behalf of the British
17 Columbia Civil Liberties Association, who has
18 been allocated so minutes.

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

20 **EXAMINATION BY MS. TWEEDIE:**

21 Q Professor Sharman, can you hear me?

22 A Yes.

23 Q Great. Thank you. I just have some general
24 questions arising out of your report. I don't
25 believe we need to bring it up, but if you would

1 like to at any point, please let me know.

2 I'd first like to turn to what you
3 described as the central paradox of AML policy,
4 and that Canada suffers from this in that it
5 has -- the law has provided an escalating
6 succession of powerful tools for surveillance,
7 prosecution and asset forfeiture and yet the
8 actual effectiveness of these laws seems to
9 remain very low.

10 I take it you would also agree that these
11 powerful tools that you reference, such as
12 surveillance and asset forfeiture, can also lead
13 to societal harm, such as the erosion of privacy
14 rights and impacts on innocent third parties?

15 A Yes, definitely. And of course even more so in
16 authoritarian regimes than democratic.

17 Q Yes, of course. And these tools often affect
18 the many and not just the few and certainly not
19 just criminals; is that correct?

20 A It depends which ones you're talking about. So
21 surveillance affects a large number of people.
22 I think only a very small number of people are
23 subject to confiscation on money laundering
24 grounds, whether justified or not.

25 Q Okay. But in terms of measures, then, such as

1 surveillance, data and information sharing, it's
2 going to affect many people. You'd agree with
3 that?

4 A Yes. I mean, in some sense anyone with a bank
5 account.

6 Q Okay. Great. Thank you. So in light of that,
7 I take it you would agree that any analysis and
8 consideration of what anti-money laundering
9 measures should be implemented have to of course
10 take into account these social costs and the
11 impact of these measures on community?

12 A I think they should take those into account.
13 Unfortunately I think they rarely do.

14 Q Okay. And speaking of social cost. Just
15 turning briefly back to civil forfeiture. You
16 wrote in your report that there are many stories
17 of accidental or deliberate misuse of
18 confiscation powers. My friend
19 Ms. Addario-Berry asked you whether you were
20 aware of any of these in the Canadian context,
21 and you said no. Just to clarify. I assume you
22 didn't undertake any extensive research about
23 civil forfeiture in the Canadian context and how
24 it might affect innocent third parties?

25 A That's correct.

1 Q Okay. Thank you. And in writing about UWOS,
2 which is another issue that you spoke about
3 today, you wrote that they may be
4 unconstitutional in certain jurisdictions,
5 including Canada. And just to be clear, you did
6 not engage in any sort of constitutional
7 analysis in this regard, did you?

8 A No. That remark was based on a Canadian
9 delegate speaking at a Financial Action Task
10 Force conference. But no, I did not.

11 Q Thank you. And similarly I assume you did not
12 engage in any constitutional analysis of using
13 the tax system and the CRA in Canada to combat
14 money laundering?

15 A That's correct. But I think I probably flagged
16 it up there that things that may be possible --
17 that are possible in Australia may not be
18 possible in Canada for those kind of reasons.

19 Q Okay. Thank you. I just have a question about
20 a statement in your report. You write at page 7
21 that Canada's compliance with international
22 beneficial ownership -- sorry, international
23 beneficial ownership is conspicuously bad, but
24 it has avoided AML and tax blacklists maintained
25 by FATF, OECD and G20.

1 You write that:

2 "Canada has benefited from the prominent
3 double-standard whereby these exclusive
4 international clubs go easy on their
5 members' failings, while reserving stigma
6 and sanctions for smaller, poorer
7 non-member states."

8 Can you please tell us more about this prominent
9 double-standard.

10 A Sure. It's a long, sad story but I'll just give
11 you the short version in that clubs like the EU
12 and the Financial Action Task Force, either at
13 various points in the EU currently, explicitly
14 apply higher standards to non-members than they
15 do to their own members. One example that's
16 already come up is the abolition of bearer
17 shares. That countries like the Bahamas were
18 blacklisted almost 20 years ago for allowing
19 bearer shares and for not having a beneficial
20 ownership way of identifying it even though at
21 the time many jurisdictions, including Canada,
22 including the United States, either allowed
23 bearer shares or had systems that failed to
24 identify the beneficial owner. As I say,
25 there's a much longer answer than that, but I

1 know that it's not the time.

2 Q Okay. Thank you. And just turning to -- on
3 page 12 of your report -- and I appreciate that
4 Mr. Martland already took you to this paragraph
5 regarding legalization -- and you write that the
6 only guaranteed way to reduce money laundering
7 is to legalize formerly criminal behaviour.
8 And you gave some evidence in that regard.

9 In addition to also being the only
10 guaranteed way to reduce money laundering, I
11 take it you would agree that legalizing formerly
12 criminal behaviour can also lead to great
13 societal benefits, for instance increasing
14 protections for sex workers and reducing debts
15 from a poisoned drug supply?

16 A That's probably outside my area of expertise. I
17 could see it having social goods or social bads
18 and I just really have no idea about the net
19 effect. I think in some areas it could be
20 positive, in areas it could be very negative.

21 MS. TWEEDIE: Okay. Thank you. Those are all my
22 questions, Professor Sharman.

23 THE WITNESS: Thank you.

24 THE COMMISSIONER: Thank you, Ms. Tweedie.

25 I'll call now on Mr. Rauch-Davis for

1 Transparency International Coalition, who has
2 been allocated 15 minutes.

3 MR. RAUCH-DAVIS: Thank you.

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

5 Q Dr. Sharman can you hear me okay?

6 A Yes, thank you.

7 Q So in response to some questions by Ms. Tweedie
8 on the international clubs, I take it that your
9 evidence overall is that bodies like the FATF
10 and other types of international clubs are too
11 lenient on more progressive western countries,
12 if I can put it that way?

13 A They're more lenient on members and they're
14 tougher on non-members.

15 Q Yeah. And perhaps that's the result of some
16 bias?

17 A Yes, definitely.

18 Q Yeah. So is it your -- is the natural
19 inference -- or is it your evidence that if they
20 were more objective, those international critics
21 would likely be more critical of countries like
22 Canada in terms of their beneficial ownership
23 regulations?

24 A Yes.

25 Q Yeah. Moving topics a bit. So your report

1 comments on the difficulty of ascertaining how
2 much money is laundered across the world and
3 also the difficulty in investigating money
4 laundering offences through economies, including
5 Canada. I circulated a document that's cited in
6 your reported. It's the "Why We Fail to Catch
7 Launderers 99 Percent of the Time."

8 MR. RAUCH-DAVIS: Madam Registrar, do you have access
9 to that document?

10 And, Mr. Commissioner, I did circulate this
11 outside of the five-day window, so I do have to
12 seek leave to put this to the witness. It is
13 referenced in his report at three separate
14 footnotes.

15 Q But perhaps -- Dr. Sharman, are you familiar
16 with this document?

17 A Yes, I am.

18 THE COMMISSIONER: All right. Well, is there any
19 objection from any source to this document being
20 put to Dr. Sharman? No. All right.

21 Hearing none, Mr. Rauch-Davis, go ahead.
22 And I see Dr. Sharman doesn't seem perturbed by
23 the notion.

24 MR. RAUCH-DAVIS: Thank you. Madam Registrar, if we
25 could just scroll down on the first page.

1 That's perfect. Thank you.

2 Q So, Dr. Sharman, you'll see the author here in
3 the first substantive paragraph sets out that
4 there was a 2005 study in the United States that
5 reflected a 99.9 percent failure rate in
6 apprehending money launderers. And then he
7 says:

8 "There is no reason to suspect Canada's
9 failure rate is any better."

10 I'm wondering if you would agree with that
11 statement.

12 A No one really knows. I'm very happy -- I'm very
13 comfortable with the conclusion that the vast
14 majority of money launderers get away with it.
15 But I think it is just wrong and misleading to
16 think that we could put a percentage figure to a
17 decimal point on that. So in terms of
18 substance, I have no argument with the author.
19 It's an area characterized by law enforcement
20 failures and criminal successes, but I'm not a
21 believer in saying it's 99.9 or maybe 99.7. Our
22 evidence is just not good enough for that.

23 Q Sure. Thank you. And then at the bottom of
24 page 1 to assess this issue there are two
25 recommendations. It's actually the last

1 sentence where it sets out two of the key
2 recommendations from another CD Howe article.
3 Publicly accessible registry of beneficial
4 ownership. And the second one is mandatory
5 declarations of beneficial ownership with
6 meaningful sanctions for false declarations.
7 And that carries onto the next page.

8 And you've given some evidence on the
9 publicly accessible registry, and I'll come back
10 to that.

11 MR. RAUCH-DAVIS: But I wonder, Madam Registrar, if
12 we can go to page 5 and 6 where the second
13 recommendation is kind of discussed.

14 Q At the bottom there's the point form there. And
15 these are the recommendations for the beneficial
16 ownership declaration. So first -- the first
17 bullet point there is:

18 "- All reporting entities should have to
19 request beneficial ownership
20 information from their customers."

21 Then onto the next page is:

22 "- Customers who provide beneficial
23 ownership information to reporting
24 entities should have to do so by
25 declaration.

4 And:

5 "- False declarations should be subject
6 to sanctions."

7 And then also the use of unexplained wealth
8 orders.

13 A It's better than the system now, but I think
14 it's not the best system and that it won't work
15 as well as proponents say it will. So I
16 think -- I mean, I don't want to make the
17 perfect the enemy of the good. It would be an
18 improvement on the current system. I think much
19 less of an improvement than the author suggests.

20 And I think that there are -- again, I'm more a
21 fan of licensed and regulated intermediaries as
22 a better way than public registries, although I
23 do see advantages in public registries, not
24 least accessibility to organizations like TI.

25 MR. RAUCH-DAVIS: Right. I wonder, Mr. Commissioner,

1 if we could have this marked as an exhibit.

2 THE COMMISSIONER: Yes, that will be the next
3 exhibit.

4 THE REGISTRAR: Exhibit 962.

5 **EXHIBIT 962: Why We Fail to Catch Money**

6 **Launderers 99.9 Percent of the Time, by Kevin
7 Comeau - May 7, 2019**

8 MR. RAUCH-DAVIS: And, Madam Registrar, if we could
9 bring up Dr. Sharman's report and go to page 10,
10 please. So I'll pick up on the public
11 beneficial ownership registry.

12 Thank you, Madam Registrar, that's perfect.

13 If you just scroll up a little bit.

14 Q There's a paragraph beginning "the main
15 advantage of a public open registry." Yes. So
16 this is the main advantage as you may have just
17 identified, but it's essentially that it will
18 assist journalists, whistle-blowers and the
19 public in combatting money laundering -- on
20 money laundering activities. And I see you
21 nodding your head.

22 A Yes.

23 Q Yeah. And referenced throughout your report is
24 the fact that most large money laundering and
25 corruption cases are actually not first detected

1 by STRs or law enforcement, more typically
2 thanks to journalist whistle-blowers and NGOs;
3 right?

4 A Yes.

5 Q And that includes things like the Panama paper
6 and Mossack Fonseca scandal as well as even that
7 Vancouver Model, which was first reported on by
8 the media?

9 A Yes, I think that's an excellent example.

10 Q And so that's where you identify the main
11 advantage of a public registry so that it
12 enables these people to assist.

13 In the same vein, I'm wondering would you
14 also agree that since there's the transnational
15 and international element of money laundering,
16 that a public registry also has the benefit of
17 enabling foreign citizens and whistle-blowers to
18 require on the predicate offence -- I mean
19 they're -- by that question I mean they're
20 closer to the predicate offence. For example,
21 in a corruption case a person in Canada might
22 not have as good of information on what a
23 minister owns as a person in the foreign
24 country. So if they're able to search a public
25 registry, they would be able to blow the whistle

on that type of sentiment.

2 A Yeah, it would make things easier for
3 transnational investigations by private citizens
4 and civil society groups. I'd agree with that.

5 Q And so then the next two paragraphs you talk
6 about the -- what you identify as the
7 disadvantages of the public registry. And I see
8 two disadvantages that are somewhat
9 interconnected. First is that there's little
0 evidence that they help in deterring, detecting
1 or combatting money laundering and that's in the
2 first paragraph there.

15 "Even the British government admits that
16 the UK remains a centre for international
17 money laundering. British corporate
18 vehicles are still prominent in these
19 cases."

20 And you use examples of the Russian and
21 Azerbaijani laundromats; right?

22 A Yes.

23 Q And so you know that the UK persons with
24 significant control registry, that was
25 implemented in 2016; right?

1 A Yes.

2 Q Yeah. And so I noted the footnote 47, which is
3 the footnote for that last sentence we just
4 reviewed, there are two articles, not the House
5 of Commons UK 18, but the two articles following
6 that are OCCRP article. And I noted when I read
7 those articles that the activities in both of
8 those reports were from 2011 to 2014. That's
9 the Russian laundromat. And then Azerbaijani
0 laundromat was 2012 to 2014. Are you aware of
-1 that?

17 Q Right. And I think that's referenced in the
18 2018 report. I just wanted to clarify that
19 those two links there don't really support the
20 contention that the UK registry is ineffective
21 because they're referencing activities that took
22 place prior to the implementation of the UK
23 registry?

24 A Certainly those dates -- yeah, I mean, 2012 is
25 earlier than 2016. No argument with you there.

1 But I think for both cases and including the
2 reporting on both cases, including by the OCCRP,
3 that they're continuing, particularly in the
4 Russian case, and they do go beyond the date
5 that the persons with significant control was
6 introduced. And, again, part of that is in the
7 2018 report as well by the parliament.

8 Q Right. In the 2018 report there is a reference
9 to that discontinuation of the activity, but I
10 also saw that there's a reference that the UK --
11 let me rephrase my question.

12 The UK PSC registry, you know that it was
13 set up for UK companies and it does not apply or
14 did not apply to owners of overseas companies
15 operating or purchasing property in the UK;
16 right?

17 A Yes.

18 Q And so that was an identified gap in the UK
19 implementation of the PSC registry. And aren't
20 they now taking -- isn't the UK now taking steps
21 to assess that issue?

22 A Well, not really. I mean, the UK gets to decide
23 the rules for its own companies. It doesn't get
24 to decide the rules for other countries'
25 companies.

16 Q Right. And then in the interests of time I have
17 to move on a little bit. But at page 17 of the
18 report -- and I won't take you there -- you
19 mentioned the abuse to Scottish limited
20 partnerships, SLPs, and how they were originally
21 excluded from the UK PSC registry. But then you
22 know that in 2017 they were brought under the
23 scope of the registry; right?

24 A Yeah. And I think -- I mean, it's probably the
25 single best piece of evidence in favour of the

1 effectiveness is the incredible slump in the use
2 of Scottish limited partnerships. And I think I
3 referred to that, that the use of them kind of
4 collapsed after they were included in the
5 registry, which gives some idea of how important
6 secrecy was for those that would be using them.

7 Q Okay. I didn't see it in your report, but I
8 could be wrong. But in the interest of time, I
9 take it your evidence is that the inclusion of
10 the SLPs in the UK registry is the best evidence
11 that the UK registry is having an effect because
12 there was a slump in incorporations?

13 A Because when they were secret, they were very
14 popular. When they became open, they became
15 rapidly very unpopular, which to me suggests
16 that the main attraction was secrecy and that
17 putting them on the registry made them much less
18 secretive and much less attractive to people who
19 were, for good reasons or for bad reasons,
20 interested in secrecy.

21 So if I was looking for one piece of
22 evidence that supports the effectiveness in the
23 UK of the PSC, I would talk about trends in
24 incorporations of Scottish limited partnerships.

25 Q Right. Because there appears to have been a

1 deterrent. Once it became --

2 A Yes.

3 Q -- public, the rate at which they were
4 incorporated dropped dramatically.

5 A Yes, exactly.

6 Q Yeah, I have a note from a Global Witness report
7 that they dropped to the lowest in seven years
8 once they became public. Do you know anything
9 about that?

10 A Yeah, I mean, I think they dropped by about
11 80 percent. They'd had this meteoric rise and
12 then an equally meteoric fall. What's not
13 reported is then they went on to Northern
14 Ireland limited partnerships and did the same
15 there, but that loophole hasn't been closed. So
16 now Northern Ireland limited partnerships are
17 the thing, not Scottish limited partnerships
18 anymore.

19 Q Right. There was a corresponding increase in
20 Northern Ireland corporations being incorporated
21 to the Scottish limited partnerships
22 disappearing?

23 A Yeah. I mean, so that's one of the relatively
24 rare examples of the whack a mole and the
25 necessity for money launderers to be responsive.

1 Q Okay. And moving on to the second of the two --
2 where you identify as disadvantages of a public
3 registry is that there's the potential for large
4 volume of low quality information. And so you
5 know that the UK has had issues with validation
6 and verification of the information going into
7 it PSC registry; right?

8 A Yes.

9 Q And that's the example you use there. So I take
10 it you'd agree that if the data quality is
11 better, the registry will be more effective?

12 A Yes. That's a big if, but I agree. Given the
13 first part of the statement, the second part
14 follows.

15 Q Right. And Global Witness is also recommended
16 that UK should resource Companies House to
17 verify the submitted beneficial ownership
18 information and then also sanction
19 non-compliance. Because you take issue with the
20 enforcement as well, right, of the information
21 going in?

22 A Sure. I mean, it's one thing saying there
23 should be more money and people should be
24 enforced, but that's a lot more easy to say than
25 to do. You've got over 3 million companies and

1 four people at Company House who are responsible
2 for that information. They've got almost a
3 million companies to deal with each. So good
4 luck on verifying that.

5 Q Right. Doesn't that just speak to resources,
6 though? Like, if -- in a perfect world if we
7 could verify all the information coming in, it
8 would be of high utility; right?

9 A Yeah, I mean, if the government hired 10,000
10 more people to work in Companies House, but I'm
11 not putting money on that outcome.

12 MR. RAUCH-DAVIS: Mr. Commissioner, I'm nearing the
13 end of my allotted time. I wonder if I might
14 indulge five more minutes. I don't anticipate
15 being too long, but I do have a few more topics
16 to go through.

17 THE COMMISSIONER: Yes. All right, Mr. Rauch-Davis.
18 Five more minutes.

19 MR. RAUCH-DAVIS: Thank you.

20 Q So I take it your criticism of the lack of
21 enforcement on information, that relates more or
22 less to one of the themes in your report that
23 there are enforcement concerns on money
24 laundering offences at large and that there
25 doesn't seem like there are many successful

prosecutions and enforcements; is that right?

2 A Yes. I mean, I think there's just a lack of
3 enforcement and implementation the whole way
4 through the system. Part of that is the lack of
5 prosecutions and convictions, but that's not all
6 of it. It's more the fact that laws are passed
7 or regulations are passed, and then they stay on
8 the books and don't really do anything.

9 Q And, I mean, would you agree that -- and I think
10 this might be referenced in your report as well
11 that police either don't have enough resources,
12 aren't experienced enough or don't want to look
13 at these types of offences and crimes?

14 A Yes, that's common.

15 Q So doesn't that just emphasize the need for a
16 public registry and the benefit we just covered,
17 and that allows some of the burden to be shared
18 with journalists, whistle-blowers and NGOs who
19 can then assist?

20 A I mean, yeah, as I said in the report, I think
21 the main benefit of the public registry is
22 exactly because it helps the parties that you
23 specify. And, you know, I'm a great fan of
24 Transparency International France taking Obiang
25 to court and all the rest, but there is this

1 kind of naive presumption that more data are
2 better. I mean, I like email, but I don't want
3 10 times more email or a hundred times more than
4 I get.

5 If you're getting 3 million unverified
6 declarations of ownership and saying well,
7 someone really should verify these. Maybe.
8 But, I mean, what are the chances of that
9 happening in any plausible public policy world?
10 I'm not sure that, you know, a large volume of
11 low quality information is the best route,
12 particularly as it's not the only route to
13 solving beneficial ownership.

14 And, again, given that the results are so
15 modest, perhaps in fairness because the system's
16 new, again, the kind of evangelical take that
17 the UK government has that everyone should have
18 one of these, the question is well, how do you
19 know? It hasn't really worked so well in
20 Britain. Why should other people get rid of
21 other systems that work better, like regulated
22 intermediaries?

23 Q Okay. But I take it you agree that the UK
24 registry is in its infancy, so in some sense
25 it's a bit of a test case; right?

1 A Yeah. I mean, if it's a test case, the thing is
2 to be modest about it and say, we don't know
3 whether this is going to work; it could be a
4 complete flop. That's not the attitude of the
5 British government, which has said, this is
6 wonderful; everyone should have one, including
7 those that do a better job than us on beneficial
8 ownership, and that this should be an
9 international standard before we have hard
10 evidence that it actually does what we hope it
11 does.

12 I mean, again, if something is in its
13 infancy and is not sure, then there's an
14 appropriate modesty that should be attached to
15 that policy recommendation.

16 Q Right. But I take it you agree that other
17 jurisdictions who are considering implementing a
18 public beneficial ownership registry, they can
19 apply a lessons-learned approach, and that
20 applies to both the criticisms in your report,
21 including verification of data as well as -- I
22 guess that criticism mostly; right?

23 A Well, I mean, unfortunately I think not. I
24 mean, it's just if you have a vast amount of
25 information to verify and an understaffed

1 registry -- I mean, Britain is comparatively a
2 rich country. International anti-money
3 laundering standards have the tendency of going
4 global. If it hasn't worked in Britain -- and
5 most places are poorer than Britain -- why would
6 it work better in most other places?

7 Q And so your preference remains that the CSPs
8 collect the beneficial ownership information?

9 A I think that's the better. Yeah, I mean, I
10 support the conclusion of the World Bank
11 10 years ago. But again, I think there are
12 important advantages, good things to public
13 registries. I think public registries are
14 certainly better than nothing. I don't think
15 they're as good as licensed and regulated
16 corporate service providers.

17 Q All right. And you did cite that 2011 report
18 from the World Bank, and again, that was prior
19 to the implementation of the UK PSC or any
20 public registry; right?

21 A Yeah, but it was when they were actually arguing
22 for it and it was when the United States was
23 thinking of implementing a very similar. And
24 the people who are least keen on registries,
25 verifying information are the people who work in

1 registries who say, forget it; we don't have the
2 people; we don't have the money; we can't do
3 this.

4 Q And I think you mentioned this in your
5 examination -- this is my last question. But
6 you would agree that you could hypothetically do
7 both as well. There could be room to have both
8 a public registry and the CSP collection as you
9 have identified?

10 A Yes. I mean, not just hypothetically. I think
11 in fact the places like Jersey and Guernsey do
12 have both, increased in the UK overseas
13 territory, so it's not just a hypothetical.
14 Some places do, and I think more will have both
15 in the future.

16 MR. RAUCH-DAVIS: Thank you, Professor Sharman.
17 Those are all my questions. Thank you for your
18 time.

19 THE WITNESS: Thanks.

20 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.
21 Now Mr. Butcher on behalf of Brad Desmarais,
22 who has been allocated 15 minutes.

23 MR. BUTCHER: Madam Registrar, you have up Professor
24 Sharman' report already. Can we go to page 3,
25 please.

1 **EXAMINATION BY MR. BUTCHER:**

2 Q I want to ask you -- I just -- top of page 3,
3 please. Thank you.

4 I want to ask you a few questions about
5 what you describe as underground banking. These
6 informal value transfer systems have ancient
7 origins. I see you're nodding your head.

8 A Yes. Sorry. Yes.

9 Q And are particularly prominent in south Asia,
10 China and east Asia?

11 A Yes.

12 Q And some of them are known as *hawala* in south
13 Asia and *fei-chien*, or flying money, in China?

14 A Yes.

15 Q And they're very culturally accepted in those
16 parts of the world?

17 A Yes.

18 Q And they still play a legitimate role in the
19 transfer of legitimate moneys from country to
20 country?

21 A Yes.

22 Q Particularly so in those places in the world
23 where there is a large south Asian and Chinese
24 diaspora?

25 A Yes.

1 Q It's impossible to quantify the amounts of money
2 that are moved from country to country through
3 these informal value transfer systems?

4 A Yes.

5 Q But they can involve small and large transfers
6 of funds?

7 A Yes.

8 Q And you make the point in your report at the top
9 of page 3 that legitimate funds transferred
10 through underground banking systems ultimately
11 have to be introduced in the recipient country
12 into their formal banking systems.

13 A Not necessarily. If they're small accounts,
14 they can be spent on consumption. If you're
15 getting a few hundred dollars from a relative or
16 maybe a few thousands, it could just be spent.
17 So to that extent there would not be a
18 requirement to introduce it into the formal
19 banking system.

20 Q Fair enough. But if it's a larger quantity, it
21 usually has to be introduced into the formal
22 banking system?

23 A Yeah, clearly unless people want to hold it in
24 cash. And indeed some people may want to do
25 that, that yes, it would have to be introduced

1 into the formal banking system.

2 Q And it's very difficult to distinguish between
3 legitimate and illegitimately sourced funds that
4 have moved through the underground banking
5 system?

6 A Yes, that's true.

7 Q Will you agree with this final question: that
8 it's likely that some funds that are transferred
9 from China, maybe even large amounts of money
10 transferred through the underground banking
11 system, do have a legitimate source?

12 A I would expect the majority of it has a
13 legitimate source.

14 ○ But, again, very difficult to quantify?

15 A Yes.

16 MR. BUTCHER: Thank you very much, Professor Sharman.
17 Those are my questions.

18 THE WITNESS: Thank you.

19 THE COMMISSIONER: Thank you, Ms. Butcher.

20 Anything arising Mr. Rauch-Davis?

21 MR. RAUCH-DAVIS: No, thank you.

22 THE COMMISSIONER: Ms. Tweedie?

23 MS. TWEEDIE: Nothing arising. Thank you.

24 THE COMMISSIONER: Mr. Usher?

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

1 THE COMMISSIONER: Ms. Herbst?

2 MS. HERBST: Nothing arising. Thank you.

3 THE COMMISSIONER: Ms. Gardner?

4 MS. GARDNER: Nothing arising. Thank you,

5 Mr. Commissioner.

6 THE COMMISSIONER: Ms. Addario-Berry?

7 MS. ADDARIO-BERRY: No, thank you, Mr. Commissioner.

8 THE COMMISSIONER: Mr. Martland?

9 MR. MARTLAND: No, thank you.

10 THE COMMISSIONER: Thank you very much for taking the
11 time to share your expertise and insights with
12 us, Dr. Sharman. It has been very helpful to
13 the commission to have the benefit of your
14 thoughtful observations and will help us in
15 coming to grips with the issues that we're
16 facing. Your excused now. And I know we've
17 taken you through your dinner hour. I apologize
18 for that. But once again, certainly grateful
19 for your participation.

20 THE WITNESS: Thank you. And thank you for making an
21 earlier start on my behalf. Much appreciated.

22 THE COMMISSIONER: Not at all.

23 (WITNESS EXCUSED)

24 THE COMMISSIONER: Mr. Martland we will adjourn until
25 tomorrow for an even slightly earlier start. I

1 gather, at 7:00 a.m.

2 MR. MARTLAND: 7:00 a.m. Yes. Thank you.

3 THE COMMISSIONER: All right. Thank you.

4 THE REGISTRAR: The hearing is now adjourned until

5 May 7th, 2021, at 7:00 a.m. Thank you.

6 **(PROCEEDINGS ADJOURNED AT 12:12 P.M. TO MAY 7, 2021)**

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