

**PROCEEDINGS AT HEARING  
OF  
NOVEMBER 30, 2020**

**COMMISSIONER AUSTIN F. CULLEN**

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**November 30, 2020**

**(Via Videoconference)**

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

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

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. Martland, do you or Mr. Isaac have conduct of this panel?

MR. MARTLAND: Yes, Mr. Commissioner. I have conduct of today's panel, and we are dealing with the topic of beneficial ownership transparency, or BOT, and in particular the concept of a BOT registry. You'll see on screen four members of our panel. We're very happy to have them joining us today. So I have alphabetically James Cohen, Peter Dent, Mora Johnson and Chris Taggart. And as the first item of business, Madam Registrar, I believe Ms. Johnson is being sworn; the other witnesses will affirm.

THE REGISTRAR: Yes. Witnesses, could you please unmute yourselves. Could each of you please state your full name and spell your first name and last name for the record. I'll start with Mr. Cohen.

THE WITNESS: (JC) Full legal name is Richard James

1 Cohen. Legal name is spelled -- or last name is  
2 spelled C-o-h-e-n.

3 THE REGISTRAR: Thank you. And Mr. Dent.

4 THE WITNESS: (PD) Peter Albert Dent. Last name  
5 D-e-n-t.

6 THE REGISTRAR: Ms. Johnson.

7 THE WITNESS: (MJ) Legal name is Mora Patricia  
8 Johnson, and my last name is spelled  
9 J-o-h-n-s-o-n.

10 THE REGISTRAR: Thank you. And Mr. Taggart.

11 THE WITNESS: (CT) Chris[indiscernible] Taggart.  
12 Last name spelled T-a-g-g-a-r-t.

13 **MORA JOHNSON, a witness**  
14 **called for the**  
15 **commission, sworn.**

16 **JAMES COHEN, a witness**  
17 **called for the**  
18 **commission, affirmed.**

19 **PETER DENT, a witness**  
20 **called for the**  
21 **commission, affirmed.**

22 **CHRISTOPHER TAGGART, a**  
23 **witness called for the**  
24 **commission, affirmed.**

25 THE COMMISSIONER: Yes, Mr. Martland.

1           MR. MARTLAND: Thank you, Mr. Commissioner. What I'll  
2           do is in a brief manner lead through the  
3           background and CVs of the four experts joining  
4           us today and then work through a series of  
5           questions that builds the concept of the BOT  
6           registry and in so doing I'll be introducing a  
7           number of documents that have been listed and  
8           identified to the participants. I'll begin --  
9           I'll do this alphabetically by last name.

10           **EXAMINATION BY MR. MARTLAND:**

11           Q     So, Mr. Cohen -- and I'll package this up, if  
12           you will, in a somewhat unwieldy leading  
13           question. Sir, you're the Executive Director of  
14           Transparency International Canada, a group  
15           that's part of the TI coalition, a participant  
16           in our commission, and, by way of background, a  
17           graduate of the University of Ottawa as well as  
18           the Graduate Institute of International  
19           Development Studies in Geneva, Switzerland. Is  
20           that true?

21           A     (CT) That is true.

22           Q     You have worked internationally, including a  
23           period of four years with the Geneva Centre for  
24           Democratic Control of Armed Forces, with  
25           Transparency International UK, with Adam Smit

Mora Johnson (for the commission)  
James Cohen (for the commission)  
Peter Dent (for the commission)  
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Exam by Mr. Martland

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1 International, with the African Centre for  
2 Justice and Peace studies, United States  
3 Institute of Peace and then since 2016 with  
4 Transparency International or TI Canada.

5 A (CT) That's true.

6 Q And so work that's seen you variously spending  
7 time in Kampala and London and Toronto and  
8 Ottawa among other places?

9 A (CT) That's true.

10 Q You're an expert in anti-corruption  
11 accountability and transparency, the author of a  
12 number of reports in those areas, and in your  
13 present role involved in managing teams and  
14 programs as well as report research and writing  
15 and training and presentations for various  
16 diverse organizations and people?

17 A (CT) That's true.

18 Q Mr. Dent, I'll turn to you, please. You are a  
19 partner with Deloitte Forensic, and I believe  
20 your title is the Managing Partner, Financial  
21 Advisory, BC Region with Deloitte?

22 A (PD) That's correct.

23 Q You are presently based in Vancouver, I think  
24 more recently -- most recently before that  
25 Toronto, but you've worked really around the

1 world, and my note is over 35 countries in total  
2 that you've worked in, as well as with the  
3 United Nations and the World Bank Group?

4 A (PD) Yes, that's accurate.

5 Q You have over 20 years experience working with  
6 clients conducting internal investigations and  
7 providing advice on anti-fraud and  
8 anti-corruption compliance frameworks in order  
9 to enhance accountability, transparency and  
10 governance?

11 A (PD) That is correct.

12 Q And you also have served in the past as the  
13 chair of TI Canada and also as a faculty member  
14 of the Directors Education Program at the Rotman  
15 School of Management at the University of  
16 Toronto?

17 A (PD) Yes, that's correct.

18 Q And taking us back even further, you have worked  
19 on retainer for the RCMP commercial crime unit  
20 and at an earlier point were a constable with  
21 the York Regional Police Service in Ontario?

22 A (PD) Yes, that's correct.

23 Q Ms. Johnson, I'll turn to you, please. The --  
24 by way of your background, you're a lawyer,  
25 consultant and an expert in responsible business

1 practices presently based in Ottawa?

2 A (MJ) that's correct.

3 Q You've developed expertise in anti-corruption  
4 and anti-money laundering compliance, the human  
5 rights responsibilities of businesses and modern  
6 slavery supply chain due diligence?

7 A (MJ) That's correct.

8 Q You have a background in government, private and  
9 non-profit sectors, including over a decade with  
10 Global Affairs Canada and what was then National  
11 Resources Canada addressing standards for  
12 transparency and business practices in the  
13 extractive sector?

14 A (MJ) Correct. Yes.

15 Q And you're a graduate of the University of  
16 Toronto Faculty of Law, and following that you  
17 worked with the special corps for Sierra Leon as  
18 well as the Iran Human Rights Documentation  
19 Center in New Haven, Connecticut?

20 A (MJ) Correct. Yes.

21 Q Mr. Taggart, you are the co-founder and CEO of  
22 OpenCorporates?

23 A (CT) Yes, I am.

24 Q Glad I got that right. An experienced  
25 entrepreneur. You previously ran and founded

Mora Johnson (for the commission)  
James Cohen (for the commission)  
Peter Dent (for the commission)  
Chris Taggart (for the commission)  
Exam by Mr. Martland

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1                   successful magazine companies and you've  
2                   developed a recognized international expertise  
3                   on global corruption -- sorry, on global company  
4                   data, in particular corporate identifiers?

5           A        (CT) Yes.

6           Q        And by way of background, if I have the sequence  
7                   correctly, you initially were a journalist and  
8                   then an editor and then a publisher of magazines  
9                   and an entrepreneur, but you've been working  
10                  exclusively in the field of open government and  
11                  public sector information since 2009?

12          A        (CT) Correct.

13          Q        All right. And so what I'd like to do is first  
14                   I'll -- I should have done this as I went  
15                   through these one by one. But I'll have Madam  
16                   Registrar please display tab 1 of the list of  
17                   documents.

18                   And for the benefit of participants there  
19                   may have been some unintended confusion from the  
20                   fact that in a witness summary we had a longer  
21                   list of documents than the listed documents for  
22                   today, so I think the list for today, including  
23                   the CVs, is 16 documents plus one late addition  
24                   from Saturday.

25                   So tab 1 of that list, you'll see,

Mora Johnson (for the commission)  
James Cohen (for the commission)  
Peter Dent (for the commission)  
Chris Taggart (for the commission)  
Exam by Mr. Martland

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1                   Mr. Cohen -- you recognize that as being your  
2                   CV?

3                   A     (JC) Yes, I do.

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

6                   THE COMMISSIONER:  Exhibit 278.

7                   THE REGISTRAR:  278.

8                                 **EXHIBIT 278:  Résumé of James Cohen**

9                   MR. MARTLAND:

10                  Q     Thank you.  Tab 4.  I'll continue to do this  
11                   alphabetically.  Mr. Dent, sir, you'll recognize  
12                   that as being your CV or biographical summary?

13                  A     (PD) I do, yes.

14                  MR. MARTLAND:  I'll ask that please be exhibit 279.

15                  THE COMMISSIONER:  Very well.

16                  THE REGISTRAR:  Exhibit 279.

17                                 **EXHIBIT 279:  Biography of Peter Dent**

18                  MR. MARTLAND:

19                  Q     Next tab 3, please.  Ms. Johnson, you'll  
20                   recognize your CV on display there?

21                  A     (MJ) Yes, I do.

22                  MR. MARTLAND:  I'll ask that please become  
23                   exhibit 280, Mr. Commissioner.

24                  THE REGISTRAR:  Exhibit 280.

25                                 **EXHIBIT 280:  Curriculum Vitae of Mora Johnson**

1 MR. MARTLAND:

2 Q And tab 2. Mr. Taggart, you'll see that, sir,  
3 is your CV on display?

4 A (CT) I do.

5 MR. MARTLAND: And if that might be please  
6 exhibit 281.

7 THE COMMISSIONER: Very well.

8 THE REGISTRAR: Exhibit 281.

9 **EXHIBIT 281: Curriculum Vitae of Chris Taggart**

10 MR. MARTLAND:

11 Q As we turn to the topic for today's evidence,  
12 I'd like to start with a pretty basic question,  
13 which is this: when we think about the misuse  
14 of corporate legal structures and in particular  
15 as that connects to money laundering, how do you  
16 identify that as a problem? In simple terms  
17 what's the problem? And, Mr. Cohen, if I might  
18 throw that question your direction first,  
19 please.

20 A (JC) Sure. And thank you for having me today on  
21 the panel. It's a great privilege to be here to  
22 testify on behalf of Transparency International  
23 Canada for the Cullen Commission and also for  
24 myself to be testifying.

25 It's a pretty serious problem in Canada, and

1 I think this has come to a head through the term  
2 snow-washing. And that was described in the  
3 Panama Papers from 2016 when journalists from  
4 the Toronto Star and CBC went through the  
5 Canadian ramifications of the leaked documents  
6 from the Panamanian law firm law Mossack Fonseca  
7 and found that intermediaries overseas were  
8 essentially advertising Canada as a easy place  
9 to hide dirty money for two reasons. One, who  
10 really thinks about Canada? Generally when you  
11 think about money laundering you think of  
12 Caribbean Islands or even the country where they  
13 were from, Panama, or some -- or alpine  
14 countries. But Canada, no one thinks about that  
15 too generally. So a bit of a cloak there.

16 And then, two, the really critical factor is  
17 our weak beneficial ownership -- weak beneficial  
18 ownership regime within Canada. And so  
19 intermediaries would say to their clients, bring  
20 your -- paraphrasing here -- bring your dirty  
21 money to Canada; it will be cleaned like the  
22 pure white snow, hence snow-washing. And our  
23 beneficial ownership regime has been -- hasn't  
24 only been advertised by these entities but also  
25 criticized by international bodies. So the

1 Financial Action Task Force, the global  
2 oversight body, in the peer review in 2015  
3 highly critiqued Canada in sections 25 and 26 on  
4 business entities and legal entities deeming us  
5 light compliance and almost non-compliance in  
6 these areas.

7 Not only that but in 2014 Canada committed  
8 itself to the G20 principles on beneficial  
9 ownership. And since then Transparency  
10 International has conducted two reviews of all  
11 G20 countries in their adherence to the G20  
12 principles. In the first review in 2015 a  
13 number of countries were deemed to have a weak  
14 framework, which wasn't too surprising. But by  
15 2017 a number of our peers had managed to move  
16 up the ladder to a better framework while Canada  
17 was left in the back as a lagger with South  
18 Korea, maintaining a weak framework on  
19 beneficial ownership transparency.

20 So we do have an international reputation  
21 from the money -- the enablers of money  
22 laundering themselves but from organizations  
23 that we submitted our own review to as a  
24 country. And the reason why we have this  
25 problem is that we have not had the obligation

1 to put forward beneficial ownership information  
2 into any legal compliance, any government  
3 mechanisms within Canada up until very recently.  
4 Traditionally it's just been financial  
5 institutions and insurance institutions that  
6 have had to conduct their own beneficial  
7 ownership due diligence as part of our national  
8 legislation, the Proceeds of Crime (Money  
9 Laundering) and Terrorist Financing Act.

10 And so our banks and our insurance  
11 institutions have been spending hundreds  
12 of millions of dollars conducting their own  
13 compliance. It's only under pressure since 2015  
14 internationally, and domestically as well, that  
15 there's been starting to be some movement within  
16 Canada moving forward on consultations on should  
17 there be a registry, especially a publicly  
18 accessible registry, and even should more  
19 entities be required to do beneficial ownership  
20 due diligence.

21 So we've seen amendments to the PCMLTFA this  
22 year that more entities such as accountants and  
23 real estate agents will need to conduct  
24 beneficial ownership transparency, which is a  
25 really progressive move. But on actual registry

1 of beneficial ownership we are still moving at  
2 close to a snail's pace here. The Province of  
3 British Columbia's is thankfully moving forward  
4 on the Land Ownership Transparency Act and the  
5 Province of Quebec is moving forward with  
6 recommendations on a publicly accessible  
7 registry. We had consultations by the federal  
8 government earlier this year but we haven't seen  
9 the results of that consultation.

10 So we certainly hope that the situation of  
11 our global reputation of a lagger globally on  
12 beneficial ownership transparency moves as we  
13 even saw the prime minister last year make an  
14 announcement that money laundering is of  
15 national importance within the country, but of  
16 course COVID-19, with so many other issues, has  
17 kind of -- seems to have played down the  
18 significance. But I would argue that if we  
19 don't want our economy to be bolstered up by  
20 further dirty money seeping its way into our  
21 real estate sector, into gaming, as was the  
22 impetus for the Cullen Commission, even into our  
23 universities, we need to crack down early on --  
24 or we need to bolster our beneficial ownership  
25 framework so that we're not in a place where the

1 Canadian economy is partially brought back up  
2 from -- a COVID-19 recovery based on dirty money  
3 and that dirty money winds up entrenching itself  
4 further into our economy and creating more  
5 stakeholders who rely on that dirty money who  
6 would fight -- or who would not want  
7 transparency as a solution to fighting that  
8 dirty money.

9 MR. MARTLAND: Thank you. Madam Registrar, if you  
10 might display the cover of tab 5.

11 Q And tab 5, Mr. Cohen, you'll recognize that, a  
12 document that's been prepared by -- I think it's  
13 sometimes call the End Snow-Washing Coalition --  
14 the Canadians For Tax Fairness, Publish What You  
15 Pay Canada and TI Canada, a report that I  
16 understand you were involved in. We see from  
17 the title, it seems to frame it as the BOT  
18 registry -- a public BOT registry being a  
19 solution or part of the solution to come to  
20 grips with snow-washing?

21 A (JC) Yes. Yes.

22 MR. MARTLAND: I'll ask that this please be marked as  
23 the next exhibit. I think that will be 282.

24 THE COMMISSIONER: Very well. Thank you.

25 THE REGISTRAR: Exhibit 282.

1                   **EXHIBIT 282: Transparency International Canada,**  
2                   **Ending Canada's Snow Washing Problem with a**  
3                   **Publicly Accessible Beneficial Ownership**  
4                   **Registry - An Advocacy Handbook, April 2020**

5                   MR. MARTLAND:

6                   Q     Mr. Taggart, would you please help us understand  
7                             from your point of view what is BOT, or  
8                             beneficial ownership transparency, and why is it  
9                             important.

10                  A     (CT) Yeah, absolutely.

11                  MR. MARTLAND: I'll just interrupt to say, Madam  
12                             Registrar, we don't need to have that document  
13                             at this point on screen. Thank you.

14                  THE WITNESS: (CT) I mean, I've been working this  
15                             area for close to ten years now and beneficial  
16                             ownership, I mean, it's a hard term, first of  
17                             all. Nobody, you know, outside of those who  
18                             work in financial crime or compliance or that  
19                             sort of thing really is familiar with it. But,  
20                             you know, is it who owns the company who  
21                             benefits from it? Of course it's a little bit  
22                             of both, but what -- I think what we really mean  
23                             when we're talking about beneficial ownership  
24                             transparency is the people who get the benefits  
25                             from the company and who have that ability to

1 control that company and when that's not  
2 immediately obvious.

3 The vast majority of companies in -- I'm  
4 sure, in BC, in Canada, certainly in the UK are  
5 very, very simple. There's just a company  
6 operating, running a shop, restaurant, business,  
7 factory, printers and so on. The owners are the  
8 directors. The beneficial owners, you know, are  
9 those same people as well, incredibly simple.

10 It's only when you get to much more complex  
11 structures that beneficial ownership  
12 transparency comes in and you start -- and  
13 whether you start talking about the ultimate  
14 beneficial owner or, you know, other sort of  
15 terms, what we're really talking about is when  
16 the shareholding doesn't tell you the story.  
17 And so a simple company, here are the directors,  
18 also the shareholders, they're also the  
19 beneficial owners. That's really straight  
20 forward.

21 When does that happen? A number of cases.  
22 One is when you've got some sort of complex  
23 structure. A very large company with some --  
24 with a complex structure, sometimes for  
25 divisions, sometimes for tax benefits, for

1 complex tax -- offshore tax structures.  
2 Sometimes because you don't want people to know  
3 that you own the company. You know, let's say  
4 you're Uber and, you know, there's a local  
5 company that is doing a pretty good ride sharing  
6 thing and you want to come in and you want to,  
7 you know, come in and dominate that market and  
8 flood it with money and take over that market,  
9 then obviously people not knowing that the  
10 company Uber is behind that company will give a  
11 lot of advantages to doing that. And of course  
12 criminals use this as well.

13 And so -- but we're only talking about --  
14 when we're talking about this in terms of this  
15 transparency, we're only talking about what was  
16 always intended, at least in many jurisdictions,  
17 certainly in the UK where -- which pioneered  
18 limited liability companies, we're only really  
19 talking about shareholding without obfuscation,  
20 essentially. And so that's what I think we --  
21 that's what generally is meant and different  
22 places have interpreted in different ways in  
23 terms of -- well, it's a percentage of  
24 shareholding; it's the ability to appoint  
25 directors; it's the ability to, you know,

1 control through nominees and so on. And we can  
2 define a regime through that, but actually  
3 beneficial ownership is a little bit wider than  
4 that, in my view, and it's about the ability to  
5 control or benefit.

6 So it's quite possible to control a company  
7 without being a director and without being a  
8 shareholder either. You can use contractual  
9 mechanisms for doing that. It's quite possible  
10 to benefit from a company with just a relatively  
11 small amount. If you're, you know, let's say, a  
12 government official in West Africa, for example,  
13 and there's a mineral rights contract coming up,  
14 actually 5 percent of that contract, even  
15 2 percent of that contract is a substantial  
16 amount. And so, you know, we might for  
17 practical reasons define it in certain -- you  
18 know, under certain regimes and what we are  
19 going to collect and what we're going to do, but  
20 really I think what we're talking about is  
21 people generally having an understanding of what  
22 is a company and who's behind it and who  
23 benefits from it.

24 Q And I think from that, Mr. Taggart, part of this  
25 is getting to the -- if I can use this

1                   terminology, getting to the real people, the  
2                   real owners as opposed to -- or the real people  
3                   either owning or controlling as opposed to, as  
4                   you say, who shows up on a list or maybe even  
5                   companies that are owned in part by other  
6                   companies or other legal entities. And almost  
7                   like Russian nesting dolls, you can't get to the  
8                   true answer as to who's at the heart of it. Is  
9                   that one way to think of this?

10                A     (CT) It is. And in most of these cases, you  
11                   know, and particularly in the -- we are talking  
12                   about individuals who are -- whether you're, you  
13                   know, some sort of -- you know, some -- an  
14                   oligarch from Eastern Europe or, you know,  
15                   someone behind -- running a drug cartel or  
16                   fraudsters, you know, there are individuals  
17                   behind this.

18                                Now, you know -- but there are also -- you  
19                   know, imagine -- you know, let's say,  
20                   everyone's -- from the James Bond movie Spectre  
21                   and things like that, it is possible for  
22                   criminal enterprises to have multiple people  
23                   behind them and for there not to be one person  
24                   as well. So I think this is really about giving  
25                   visibility if we just limit it, and there are

1                   very good business reasons why you wouldn't  
2                   limit, you know, companies just to have  
3                   individuals as shareholders and not have  
4                   corporate structures. But if you just have  
5                   individuals as shareholders and that was all,  
6                   and that was the simple world that we used to  
7                   have, you know, a few hundred years ago, then I  
8                   think in that case, you know, what we're talking  
9                   about is you being able to see who the  
10                  shareholders are, who controlled this, who  
11                  benefitted from it.

12                  But now in a world which is globally  
13                  connected and where companies can exist in  
14                  multiple areas, where corporate networks can  
15                  evolve very, very quickly and so on, this is  
16                  really about pulling back the curtain and seeing  
17                  what's really going on. And I think that's  
18                  important not just from a financial crime point  
19                  view, from a law perspective, from  
20                  anti-corruption point of view, it's also  
21                  critical for business as well.

22                  Q    Mr. Dent, do you have a comment on this?

23                  A    (PD) Thank you. And thank you for inviting me  
24                  to be part of this panel today as well.

25                  Yes, the comment that I have, of course I

1                   share the sentiments of both Mr. Cohen and  
2                   Mr. Taggart expressed thus far. But to sort of  
3                   summarize this, there is other elements of the  
4                   issue around the misuse of corporate structures  
5                   to facilitate money laundering. So corporate  
6                   anonymity allows a beneficial owner to distance  
7                   themselves from the predicate offence and also  
8                   it allows them to increase the complexity and  
9                   expense of conducting an investigation. Those  
10                  are two issues that should not be lost in the  
11                  overall comments of this. And maybe we'll come  
12                  back to that later during our discussion this  
13                  morning.

14                         But shell companies allow an inexpensive  
15                         means of adding one or more layers between the  
16                         beneficial owner and the alleged criminal  
17                         transaction in question. And so, you know, one  
18                         way to describe this is to use an example. And  
19                         so, for example, an owner -- a beneficial owner  
20                         of a company is bidding on a government  
21                         contract, and in order to get that government  
22                         contract they pay a bribe to a government  
23                         official. Now, it wouldn't be wise for that  
24                         beneficial owner to pay that bribe directly out  
25                         of their company and therefore what they will do

1                   in many instances is set up a shell company.  
2                   And that shell company may or may not include  
3                   them as a director. Often it does not. If they  
4                   set up that company in Canada, then the  
5                   shareholder information around that shell  
6                   company is not available, certainly not easily  
7                   available to either law enforcement or the  
8                   general public. And then they will subcontract  
9                   goods and services. Those goods and services  
10                  may be the same goods and services that they  
11                  were providing to the government contracting  
12                  entity or not. But in essence, then, the  
13                  transaction or the bribe payment is made through  
14                  the shell company that they've set up and it  
15                  insulates them from the transaction.

16                  Now, if they're being really wise, then they  
17                  will set up another shell company underneath  
18                  that first shell company, so what I'll refer to  
19                  as SC2. SC2 has then subcontracted the goods  
20                  and services contract, has different directors  
21                  associated with it and may in fact have  
22                  different shareholders as well of public record.  
23                  And therefore that's a further complexity and  
24                  sort of layer of insulation between them and the  
25                  ultimate company that was gaining the -- who

1                   they're a beneficial owner of.

2                   And so therefore it's this misuse of these  
3                   shell companies or private company structures  
4                   that allow that beneficial owner to hide or  
5                   disguise or mask who they are from the original  
6                   transaction. And if they're really smart about  
7                   it, one of these shell companies or both of them  
8                   will be set up in jurisdictions outside of  
9                   Canada. Not because those jurisdictions afford  
10                  even more anonymity than Canada does -- in many  
11                  instances Canada affords enough anonymity around  
12                  the shell company ownership structure to  
13                  insulate them -- but what it does is it adds to  
14                  the complexity of conducting an investigation.  
15                  It goes from a domestic investigation to an  
16                  international investigation. It increases  
17                  exponentially the costs of conducting that  
18                  investigation and it dissuades, whether it be  
19                  the private sector or the public sector, in  
20                  following through on such an investigation. So  
21                  that would be -- we shouldn't lose sight of how  
22                  those -- that misuse is and what the strategy of  
23                  these misuses of corporate structures are.

24                  Q     Thank you. Ms. Johnson, I'd like to turn to  
25                  you.

1 MR. MARTLAND: And if I might ask Madam Registrar to  
2 display tab 10.

3 Q Ms. Johnson, you'll recognize this as being the  
4 paper that you've written for -- I suppose  
5 commissioned by the commission, so to speak,  
6 specifically looking at key issues relating to a  
7 BOT registry in this province and providing  
8 information and advice for the benefit both of  
9 the public and also this inquiry process; is  
10 that fair?

11 A (MJ) Yes.

12 MR. MARTLAND: Mr. Commissioner, I'll ask, please,  
13 that this submission to the Cullen Commission  
14 document dating to November of this year be  
15 marked as the next exhibit please.

16 THE COMMISSIONER: Very well.

17 THE REGISTRAR: Exhibit 283.

18 **EXHIBIT 283: Mora Johnson: Submission to the**  
19 **Cullen Commission - November 2020**

20 THE COMMISSIONER: Thank you.

21 MR. MARTLAND: And if I might ask to go to page 3 of  
22 the PDF as well as the numbered page of the  
23 document. And in doing this what I'd like to do  
24 is read a portion of it and then ask a few  
25 questions. So I'll begin -- if we go down just

1                   a little bit please, Madam Registrar, to --  
2                   that's fine.

3           Q       If we look in the middle there's a  
4                   paragraph that reads as follows:

5                    "In policy discussions about increasing  
6                    the transparency of corporations, it is  
7                    worth recalling that corporations are  
8                    creatures of statutes passed by  
9                    legislatures, and therefore, their  
10                   proliferation in our economy and society  
11                   represents a deliberate public policy  
12                   choice. Through incorporation, a company  
13                   with a separate legal personality is  
14                   created under the law, whereby the  
15                   liability of those investing in the  
16                   company is limited to the amount invested.  
17                   Thus, the corporate form represents a  
18                   fundamental intervention of the state into  
19                   the free marketplace, altering potential  
20                   risks, benefits, and liabilities of  
21                   different stakeholders. Note that  
22                   incorporation does not reduce risks, but  
23                   rather, displaces them, tipping risks away  
24                   from investors and reallocating them onto  
25                   others in our economy, largely creditors,

1 consumers, and governments."

2 In the next paragraph down you write:

3 "Additionally, as is being examined --"

4 And you refer to this commission.

5 "... the corporate form is also  
6 regrettably associated with its abuse by  
7 criminals to anonymize their activities  
8 and hide from law enforcement."

9 And since I'm reading from this I'll read the  
10 next portion as well.

11 "This submission argues that corporate  
12 beneficial ownership transparency will not  
13 only assist law enforcement in  
14 investigating money laundering, tax  
15 evasion and organized crime, but that much  
16 broader societal benefits will be gained  
17 in ensuring that all actors in the economy  
18 who encounter corporations will be able to  
19 have information about who owns and  
20 controls them."

21 So having read that out, because I think that's  
22 a useful way to frame the discussion, would you  
23 care to comment on whether anonymous ownership  
24 is a legitimate feature of companies?

25 A (MJ) Thank you, and thanks also for just

1                    inviting me to be here today.

2                                       So in my view there actually is no  
3                                       principled justification writ large for  
4                                       anonymity of companies. As you've read out,  
5                                       it's a fundamental policy choice to displace  
6                                       risks and to alter risks in the free market.  
7                                       But given that creditors, consumers and also  
8                                       governments, who often don't get their taxes  
9                                       paid, incur higher risks, I think the benefits  
10                                       are really obvious of increasing beneficial  
11                                       ownership transparency.

12                                       There also -- you know, it was mentioned  
13                                       earlier by Peter, public procurement is another  
14                                       area where officials will benefit from knowing  
15                                       who owns companies. Consumer watch dogs.  
16                                       There's a whole range of actors in our economy  
17                                       that would greatly benefit from knowing who owns  
18                                       or controls corporations. And certainly I echo  
19                                       what Peter was saying about the criminal misuse  
20                                       of corporations.

21                                       So in short there's no writ large  
22                                       justification for anonymous ownership of  
23                                       corporations. There might be some narrow  
24                                       exceptions with public disclosure, and we can  
25                                       talk about that when we talk about privacy.

1           Q     If I might just pick up on one point that you  
2                   referred to: the public procurement question.  
3                   I take it that brings into question the matter  
4                   of public or government contracting and the  
5                   possibility of corruption in terms of who is  
6                   bidding for contracts, how they're awarded,  
7                   et cetera. Those sorts of issues come -- arise  
8                   in that context?

9           A     (MJ) Yes. Absolutely. I mean, there's often  
10                   restrictions on who is eligible to bid on  
11                   government contracts. There might be -- I mean,  
12                   just depending on the jurisdiction and the kind  
13                   of contract. There would also be -- or people  
14                   who are prohibited from bidding on the  
15                   contracts. For example, people who have been  
16                   convicted of fraud or money laundering. There  
17                   might be particular corporations that are  
18                   prohibited for ten years. And so beneficial  
19                   owners can merely create a brand new shell  
20                   corporation and set up and put in an excellent  
21                   bid that would -- you know, that would go around  
22                   the legislative objectives. So it's really  
23                   important for officials running public  
24                   procurement to know who the beneficial owners  
25                   are.

1 MR. MARTLAND: Madam Registrar, we don't need the  
2 document displayed at this point. Thank you,  
3 though.

4 Q Mr. Taggart, would you like to add to those  
5 comments?

6 A (CT) Thank you. Yes. This is maybe coming from  
7 a techie's perspective, another way of looking  
8 at this, you know. I really strongly echo what  
9 Mora said. And, you know, I've been in the  
10 private sector my entire life and, you know, not  
11 come from an engineering background and anything  
12 like, but, you know, there's two huge benefits  
13 to companies and -- but I really don't see  
14 anonymous ownership any -- forms any legitimate  
15 feature at all. There might be benefits for a  
16 company -- an individual company, for them to  
17 have it. They might see a benefit in the same  
18 way they might have a benefit to not paying  
19 taxes or not cleaning up after their chemical  
20 spills or undermining competition but it doesn't  
21 mean it's good for society. But I'm looking at  
22 this from a slightly different perspective.

23 What I think is happening is that, as Mora  
24 said, it's about a legal construct that's being  
25 created by law. And what's happening is when

1                   somebody creates one of these legal constructs,  
2                   they create a legal person, a legal person who  
3                   can act on their behalf. You know, that person  
4                   can hold assets; it can owe money; it can employ  
5                   people; it can enter into contracts on their  
6                   behalf; it can even break the law.

7                   So the owners get the benefit from this  
8                   proxy person, but they don't get any of the  
9                   downsides. You know, they get the money, they  
10                  get the activities, they get the influence, but  
11                  they just don't -- you know, don't get hit by  
12                  losses and they don't go to jail if the company  
13                  has broken the law in most cases.

14                  And so it's a great -- it's a great wheeze,  
15                  but it's not just that because the -- this proxy  
16                  for the owner, which is, you know, almost like  
17                  an avatar or someone they can control by remote  
18                  control, it can only -- it doesn't just do this  
19                  in the jurisdiction where the owner's based and  
20                  where the company's incorporated, it can do this  
21                  anywhere in the world. So you have this sort of  
22                  like remote control person that can go off and  
23                  do all sorts of things, can get the benefits and  
24                  even if it's caught functionally, mostly what  
25                  the recourse is is the assets of that local

1                    company and not to the people that are behind  
2                    them.

3                                       And so this is a tremendously powerful  
4                    thing. And of course it's not even that.  
5                    It's -- you have this remote control actor --  
6                    remote controlled actor who can control other  
7                    actors. You can have companies controlling  
8                    companies controlling companies. You can have  
9                    them diverting their control. You can make  
10                    it -- as Peter said, make this incredibly  
11                    complex.

12                                       And when I look at this, I see something  
13                    that's much more like a -- you know, Russian  
14                    hacker or something controlling a computer in  
15                    the Seychelles that controls a computer in the  
16                    Cayman Islands that controls a computer in  
17                    Nevada that controls a computer in  
18                    British Columbia and then that hacks somebody's  
19                    bank account, for example. You know, it's --  
20                    and they're using all of these to obfuscate it.  
21                    And of course, like that computer hacker, by the  
22                    time you've discovered what's happened to -- the  
23                    crime that -- you know, by the time that crime  
24                    becomes visible, the network's gone or  
25                    functionally it's gone. The money's gone. You

1                   can't get back at that person.

2                               And we're not talking small sums here.

3                   Danske Bank started from 2007 and it's only now  
4                   coming out that's over \$200 billion. And  
5                   because of this, I think -- and again backing up  
6                   what Mora says -- we've got this fundamental  
7                   fact that this -- you know, that the  
8                   construction of this legal entity, this proxy,  
9                   the sort of remote control body must necessarily  
10                  be a public act. Because if it isn't, if you  
11                  can't see that, then we are in a very difficult,  
12                  dangerous world.

13                               And this was acknowledged way back in the  
14                   19th century with the birth of the company as we  
15                   know it. And actually the BC consultation  
16                   document talks about the 1856 Companies Act,  
17                   which was the first one to introduce limited  
18                   liability companies en masse. And Robert Lowe,  
19                   who later became chancellor of the Exchequer,  
20                   introducing that act said it's essential to give  
21                   "the greatest publicity to the affairs of  
22                   companies, that everyone may know on what  
23                   grounds he is dealing." And that's  
24                   fundamentally what we're talking about here. So  
25                   this -- there is really no justification in

1                   anonymity. And if it's allowed and we are  
2                   seeing the results, terrible, terrible things  
3                   happen. Not just about money laundering but  
4                   fraud, people walking away from their  
5                   responsibilities, corruption, you know,  
6                   organized crime. All sorts of things. And as  
7                   well undermining competition.

8                   So I think that this must necessarily always  
9                   be a public act, and so I would support the idea  
10                  that there is no place for anonymity. Thank you  
11                  for your time.

12                  Q    I appreciate those points. That was helpful.

13                  Mr. Cohen, I'd like to ask you. Do you --  
14                  would you describe there being some building  
15                  international shared support or an international  
16                  norm that's emerging in support of the concept  
17                  of BOT and BOT registries?

18                  A    (JC) Yes, I'd say that there is. There's a  
19                  couple of paths forward for the momentum for  
20                  beneficial ownership transparency in a registry,  
21                  and not just a government accessibly -- or  
22                  government accessible registry but in a publicly  
23                  accessible registry. And this really kicked off  
24                  with the United Kingdom government establishing  
25                  the persons of significant control registry in

1                   2016, and thankfully this started to put  
2                   pressure on additional countries with more  
3                   advocates calling for this.

4                   So one of the big pillars we see for the  
5                   movement forward on a publicly accessible  
6                   registry is with anti-money laundering  
7                   directive 5 in the European Union, and this  
8                   required all EU members to establish a publicly  
9                   accessible registry by 2020. Now, some  
10                  countries have been moving slower than others,  
11                  they've been benchmarked and critiqued on this,  
12                  but there still is still that target. We've  
13                  seen countries, though, like Denmark, Slovakia  
14                  have publicly accessible registries, Portugal to  
15                  an extent. It's accessible by Portuguese  
16                  citizens who log in with their national ID card.  
17                  We even see countries outside of the EU within  
18                  the European area such as Ukraine establishing a  
19                  registry. So this has put up a lot of momentum  
20                  and even people will -- a lot of criticism will  
21                  come that that's fine that the United Kingdom  
22                  has a publicly accessible registry but the real  
23                  problem is their overseas territories. And  
24                  we're happy to see that in the UK legislature  
25                  that there was passage for the need for the

1 establishment of publicly accessible registries  
2 that and that these overseas territories are  
3 cooperating with this. And we've seen  
4 announcements from countries like the British  
5 Virgin -- or from British Virgin Island and  
6 Cayman Islands move towards a public registry.

7 The other areas that are looking -- or the  
8 other movements that are picking up on this are  
9 the Extractive Industries Transparency  
10 Initiative, EITI, which has over 15 members.  
11 And they've called upon all members as part of  
12 being accredited to EITI to publicly -- or to  
13 publish the information of beneficial -- of  
14 ultimate beneficial ownership for any company  
15 that wants access to resources or mining or gas  
16 and oil rights within their country. They don't  
17 specifically call for a registry, but they have  
18 recommended that a publicly beneficial ownership  
19 registry is the best way to hold this  
20 information or to store this information and  
21 make it accessible.

22 And then finally, also the Open Government  
23 Partnership, of which Canada is a member and was  
24 a co-chair last year. There's been movement for  
25 publicly accessible registries with the BO

1 leadership group, headed by the UK once again,  
2 and signed on members including -- Kenya and  
3 Mexico, Armenia, Slovakia I believe are the  
4 members calling for publicly accessible  
5 registries. So we're seeing more and more  
6 momentum, more and more movements collecting  
7 this as an initiative.

8 Most recently in Transparency  
9 International's biannual exporting corruption  
10 report that focuses on OECD member countries'  
11 commitment to the anti-corruption or the  
12 anti-bribery convention, we -- or Transparency  
13 International, our secretariat office in Berlin  
14 scored countries on their beneficial ownership  
15 information as part of an acknowledgement that  
16 it's important to have ultimate beneficial  
17 ownership information available to crack down on  
18 bribery. And there's a push to acknowledge that  
19 within the OECD.

20 And then finally, of course there's the  
21 question of the United States and where is it  
22 going on beneficial ownership transparency, and  
23 they are within a breath of passing legislation  
24 that's been -- that has support from both the  
25 Republican and Democratic parties for

1                   establishing a national registry in the US.

2                   So this leaves Canada still kind of falling  
3                   behind in this area. At least we are talking  
4                   about it, but as we drag our feet we become more  
5                   and more of the laggards. And as we become the  
6                   laggards internationally, we become the easy  
7                   target as well for the crooks to want to place  
8                   their funds.

9                   Q    Mr. Cohen, you've sort of taken us from the  
10                   international and then turned to Canada. And if  
11                   we set aside the province of British Columbia  
12                   for a moment, could you say more about within  
13                   Canada either at a national level, as I say  
14                   setting aside BC for a moment, other provinces,  
15                   what sorts of developments and the level of  
16                   progress that you see in Canada, please.

17                   A    (JC) Right. So since the critique, the 2015  
18                   peer evaluation from the FATF, we've seen some  
19                   movement on addressing beneficial ownership  
20                   transparency in Canada, but it's still  
21                   relatively slow. This has kicked off with  
22                   federal, provincial, territorial discussions at  
23                   the -- amongst ministries of finance to discuss  
24                   beneficial ownership. We're happy to see that  
25                   momentum. And it led to what -- and I can't

1 speak to the exact formality of the process, but  
2 there was an agreement that there was going to  
3 be this kind of two-phase approach.

4 One was updating all jurisdictions'  
5 corporate registry laws within the first phase.  
6 So the federal government updated the  
7 corporations -- or the Canadian Business  
8 Corporations Act so that it required all  
9 federally incorporated companies to have  
10 beneficial ownership information on hand should  
11 it be requested by relevant authorities. So  
12 that includes FINTRAC, the CRA and RCMP. But  
13 that's without a warrant. So it's the  
14 equivalent of going up to a potential criminal's  
15 house, knocking on the door and saying, would  
16 you please bring out your beneficial ownership  
17 information, and waiting a while while somebody  
18 maybe slips out the back and sets up another  
19 house.

20 All provinces and territories were meant to  
21 mirror this legislation. I don't have on hand  
22 how many of the provinces and territories have  
23 mirrored. I do know we -- Transparency  
24 International Canada, we participated in public  
25 consultations for Ontario to bring that -- or to

1 mirror that information. I believe Nova Scotia  
2 has updated their legislation to update that  
3 information as well. The same with  
4 British Columbia.

5 The second phase is looking at a publicly  
6 accessible registry of beneficial ownership.  
7 The federal government held public consultations  
8 on that question in February or in spring --  
9 winter/spring this year they closed around May.  
10 The Province of British Columbia also held  
11 consultations and the province of Quebec just  
12 went ahead and proposed a publicly accessible  
13 registry in their 2020/2021 budget. So there is  
14 movement there.

15 So there's this discussion of because you  
16 can't just have any one jurisdiction move  
17 forward on establishing a publicly accessible  
18 registry, you need to have this coordination.  
19 Because if the federal government were to only  
20 have a publicly accessible registry, that's one  
21 of 14 jurisdictions, and I believe last we had  
22 in one of our reports that the federal  
23 government's public registry is about the fourth  
24 largest corporate registry in Canada. So there  
25 needs to be harmonization so that, once again,

1                   within Canada crooks don't just find the easiest  
2                   path that there is.

3                   And once again I highlighted that the prime  
4                   minister raised anti-money laundering last year,  
5                   and I would say that events in British Columbia  
6                   have put it up to a national level. The  
7                   revelations of the term "snow-washing" and  
8                   "Vancouver Model" brought it up to a national  
9                   level. And then even in last year's federal  
10                  election we saw three main party -- the  
11                  Liberals, Conservatives and NDP all put some  
12                  proposal of anti-money laundering within their  
13                  federal platforms. And once the liberals were  
14                  elected into the minority government, we did see  
15                  in federal mandate letters the Minister of  
16                  Finance and the Minister of Industry, Science  
17                  and Development -- and Education [sic]  
18                  Development have -- looking into a beneficial  
19                  ownership registry within those mandate letters.

20                  So we do know that it does have priority at  
21                  a federal level. I believe also the Minister of  
22                  Public Safety had -- addressing money laundering  
23                  in his mandate letter. We're still waiting to  
24                  see the updated mandate letters across the  
25                  federal government, and we hope that it sustains

1                   that level of priority. So it's really a matter  
2                   of making sure the movement goes forward on this  
3                   within Canada.

4           Q       The End Snow-Washing Coalition has a report that  
5                   deals with this.

6           MR. MARTLAND: Madam Registrar if we could look at  
7                   tab 6, please.

8           Q       And I'll just read out the title as that is  
9                   brought up. "Implementing a Publicly Accessible  
10                  Pan-Canadian Registry of Beneficial Ownership."  
11                  It's a review of legislative and technical  
12                  options.

13                         Mr. Cohen, you recognize that report on this  
14                         topic?

15           A       (JC) I do. I do.

16           MR. MARTLAND: I'll ask that that please be marked as  
17                   exhibit 284.

18           THE COMMISSIONER: Thank you.

19           THE REGISTRAR: Exhibit 284.

20                                 **EXHIBIT 284: Transparency International Canada,**  
21                                 **Implementing a Publicly Accessible Pan-Canadian**  
22                                 **Registry of Beneficial Ownership - Legislative**  
23                                 **and Technical Options, 2020**

24           MR. MARTLAND: And I'll next turn from the national  
25                   to the province of British Columbia. And to

1                   situate ourselves we're -- and I don't need that  
2                   document displayed at present. Thank you. The  
3                   context here is considering a BOT registry for  
4                   companies in relation to -- and there's already  
5                   been some reference to this in terms of a  
6                   consultation in this province -- recent efforts  
7                   by the Province of British Columbia moving  
8                   towards a registry. There have been efforts  
9                   that deal with that in the real estate context  
10                  as well as the company context, so I want to try  
11                  to make sure we separate the two for the purpose  
12                  of our discussion.

13                         I wonder if I might try to do this first  
14                         with -- tab 14 from the list of documents,  
15                         Mr. Commissioner, is already an exhibit. That's  
16                         exhibit 55. If that could please be brought up.

17                         Mr. Dent, I'll give you a warning, this is  
18                         headed your direction, sir, once I can formulate  
19                         a question.

20                         Tab 14 we see the "BC Consultation on a  
21                         Public Beneficial Registry." And if we look,  
22                         please, to -- I'll just review briefly what this  
23                         document is. So if we go down to the foreword.  
24                         I think that will be page 3 of the PDF or so.  
25                         We see there at the top of course a foreword

1 from the Minister of Finance and Deputy Premier  
2 at the time about three or four paragraphs down  
3 a paragraph beginning with "our work." And then  
4 that refers to the expert panel report,  
5 Professors Maloney, Somerville and Unger,  
6 recommendations to improve data collection and  
7 data sharing, including, from the expert panel  
8 report, recommendation 5 suggesting consultation  
9 on a full corporate beneficial ownership  
10 registry consistent with best practices.

11 If we go over to the next page, please. And  
12 all of this is to try and situate what -- where  
13 things stand in this province and then ask you  
14 some questions about it. The second  
15 paragraph there:

16 "B.C. added to this global momentum last  
17 spring with the successful passing of --"  
18 LOTA.

19 "-- the Land Owner Transparency Act, which  
20 establishes the world's first public  
21 registry of beneficial ownership in real  
22 estate."

23 And then there's indication in the next sentence  
24 about consultations to increase beneficial  
25 ownership transparency of companies. And that

1 is referred to in the next paragraph:

2 "Our next step is to consider how  
3 transparency for the beneficial ownership  
4 of companies will look in the future --"

5 And then really a call-out for people to give  
6 their input on that very topic. If we go to the  
7 next page briefly you'll see the different means  
8 of communication that were put on offer for  
9 people to make submissions to it.

10 If we go over, please, to page 8, which -- I  
11 think it will be down a few more pages perhaps  
12 because I'm looking at the page numbering.  
13 Probably page 10 of the PDF.

14 There at the bottom "The Current State of  
15 Company Beneficial Ownership in BC." Reference  
16 to the British Columbia Business Corporations  
17 Amendment Act 2019 eliminating bearer shares,  
18 requiring BC private companies to list their  
19 beneficial owners using the terminology of  
20 "significant individuals" in the legislation and  
21 a transparency register at the company's  
22 corporate records office and is then said to be  
23 accessible by law enforcement, tax authorities  
24 and certain regulators.

25 And maybe I can just pause there to make

1                   sure we have the distinction between a public  
2                   registry and what this refers to as being  
3                   records that are held at a records office  
4                   accessible by law enforcement and certain  
5                   authorities.

6                   So, Mr. Dent, why don't I ask you, please,  
7                   if you could help us understand that  
8                   distinction. Sorry, Mr. Dent. You are muted.

9                   A     (PD) Sorry, I --

10                  Q     No, no.

11                  A     (PD) -- strategically double muted myself.  
12                        Sorry about that. But you're asking me in terms  
13                        of the impact of having information available in  
14                        what is referred to as a transparency registry?

15                  Q     Yes.

16                  A     (PD) But -- yes, in effect it's not transparent.  
17                        That would be my response. And it's not  
18                        transparent because it's not accessible to the  
19                        general public. It's not accessible to other  
20                        government agencies or regulators without making  
21                        a request to gather that information. And so it  
22                        is good first step in that now private companies  
23                        in BC must maintain a record of who their  
24                        beneficial owners are. Now, that record,  
25                        though, is then maintained at their corporate

1 records offices, wherever they may be located.

2 I hope that answers the question.

3 Q Yes, that's helpful. So we're talking about  
4 records that are, I guess in very practical  
5 terms, held at some business address or records  
6 office, as you say as, as opposed to, for  
7 example, when we speak about the publicly  
8 accessible. In this day and age I take it  
9 that's universally an online platform that  
10 people can simply click their way along to  
11 access the information?

12 A (PD) That's correct. It's not publicly  
13 accessible. And while law enforcement or the  
14 tax authorities other regulators could make a  
15 written request or they could get a court order  
16 to obtain access to it, it is -- if they have to  
17 make a request, one would argue that it's also  
18 dissuasive in terms of making that request  
19 because it would enable or it would result in  
20 the tipping especially that an ongoing  
21 investigation is underway into the matter. And  
22 so unless law enforcement wanted to tip the  
23 subjects of the investigation that one was going  
24 on and weren't at the stage of being able to  
25 obtain a court order, that might dissuade them

1 from actually making a request.

2 MR. MARTLAND: In terms of getting a read on where  
3 the province stands right now, if we could  
4 please look to -- I think it will be page 13 of  
5 this PDF, Madam Registrar.

6 Q And you'll see there chart 1 "BC's Progress on  
7 the Expert Panel's 5 Beneficial Owner Best  
8 Practices." First that the information is  
9 maintained about beneficial owners. That's  
10 stated to be in progress, but this is the point  
11 you've just been referring to, Mr. Dent, that  
12 it's at the records office as opposed to a  
13 public -- a publicly accessible database.

14 A (PW) Not a publicly -- it's not a public  
15 database either. This is maintained  
16 individually within the corporate records.  
17 There is nothing that is maintained within a  
18 central database unlike a driver's licence  
19 database or, you know, another -- or a BC health  
20 database. There's no publicly accessible -- or  
21 no even government accessible registry or  
22 database of this information.

23 Q The next item listed is that the ownership  
24 threshold -- the recommendation in the expert  
25 panel report was not higher than 10 percent.

1                   You'll see in the right side of that chart  
2                   BC has chosen the 25 percent threshold to align  
3                   about the federal, provincial, territorial  
4                   working group on beneficial ownership.

5           A       (PD) Yes, that's correct.

6           Q       We will circle back to speak some more about the  
7                   threshold of whether it's 25 or 10 or what sort  
8                   of approach is taken. Third:

9                   "The beneficial ownership register should  
10                   include all types of non-individual  
11                   owners."

12                   And what it says on the right is that the  
13                   register requirements apply to private companies  
14                   but not partnerships or trusts.

15          A       (PD) That's correct.

16          Q       Is that a fair statement of where things stand  
17                   in BC at present?

18          A       (PD) Yes, that's correct.

19          Q       Again, a point we've already covered somewhat.  
20                   That:

21                   "The ... ownership register should be  
22                   easily accessible and regularly updated."

23                   And where that stands the right side, this is  
24                   item number 4:

25                   "Transparency register is only accessible

1                   by law enforcement, tax authorities and  
2                   designated regulators."

3           A       (PD) That's true. There is not -- does not  
4                   appear to be a verification process that is  
5                   currently in place. There are options for  
6                   verification open to the government. One is  
7                   that they can do spot checks. So there is a  
8                   verification process that they can do through a  
9                   spot check just to ascertain whether or not the  
10                  information is correct but that -- the onus is  
11                  then on -- the onus is on the government to  
12                  conduct those spot checks and have the resources  
13                  available to do that.

14                   The other one is there a certification  
15                   process that a corporation would certify this  
16                   information is accurate that it is providing.  
17                   But that does not include -- similar to what  
18                   companies do in terms of certifying their  
19                   financial statements where it's an individual  
20                   officer within the organization, in that case it  
21                   would be the chief financial officer that is  
22                   certifying the accuracy of the financial  
23                   information. There is not -- to my  
24                   understanding there's not a designated  
25                   individual that would have to sign that they

1                   have certified that this information is correct.

2                   Q     Why does it matter to have someone signing on  
3                   the dotted line?

4                   A     (PD) Well, it creates a level of personal  
5                   responsibility within the organization. And so  
6                   somebody is then ultimately accountable for the  
7                   accuracy of that information. It is not -- the  
8                   accountability is not diffused across the  
9                   corporation.

10                  Q     And I wonder if you could -- if I could  
11                  continue, Mr. Dent, in quizzing you a little bit  
12                  with respect to the state of play on corporate  
13                  beneficial ownership information as opposed to  
14                  in the Land Owner Transparency Act context, that  
15                  legislation. If you could help us understand  
16                  how those might be -- what do they share in  
17                  common versus where do they differ?

18                  A     (PD) Well, I mean, where they -- what they share  
19                  in common, at least in terms of corporate --  
20                  private company information in BC is that it is  
21                  not different than private company data in the  
22                  rest of Canada in that there is no single source  
23                  of beneficial ownership information around  
24                  private companies in Canada. There's no data  
25                  independence and reliability that you can place

1                   on information that is maintained, where  
2                   information is maintained in the public record.  
3                   There's no requirement for that data to be  
4                   current. Well, there is a requirement for the  
5                   data to be current, but there's no means of  
6                   enforcing compliance around maintaining the  
7                   currency of the data in corporate registration.  
8                   That could mean corporate filings, directorship  
9                   information. There's no data verification.  
10                  We've already talked about that. And there's  
11                  not a lot of enforcement or sanctions for  
12                  submitting incorrect data or information in the  
13                  public record either.

14                  So there's not a lot of difference between  
15                  BC and the rest of Canada with respect to  
16                  private company data. There is of course --  
17                  what is different with respect to the Land Owner  
18                  Transparency Act and land owner transparency  
19                  register is that it is a first step towards  
20                  basically recording beneficial ownership, but it  
21                  is specifically focused around real estate  
22                  transactions and not around private company  
23                  data.

24                  Q    I've been -- we've been -- I've been asking a  
25                  few questions that draw on the BC consultation

1 document which concluded -- that consultation  
2 progress we heard earlier which concluded the  
3 spring of 2020. And just to close off on that  
4 there's two further documents.

5 MR. MARTLAND: Madam Registrar, I appreciate I'm  
6 keeping you hopping. Tab 15 and, after that,  
7 tab 16.

8 Q And this starts with an email. And if we go  
9 down a little bit, Mr. Dent, at the bottom there  
10 we see an email from you to Mr. Primeau and some  
11 others with the provincial government, I  
12 believe. If we turn over to page 3 of this  
13 document. And, Mr. Dent, is this the -- am I  
14 right to say this is a submission that's made by  
15 Deloitte dating to April 30th of this year to  
16 the federal consultation process?

17 A (PD) It is, yes.

18 MR. MARTLAND: I'll ask, please, that tab 15 become  
19 the next exhibit, Mr. Commissioner.

20 THE COMMISSIONER: Very well. 284, I think.

21 THE REGISTRAR: Next one -- 285, Mr. Commissioner.

22 THE COMMISSIONER: Thank you.

23 **EXHIBIT 285: BC Beneficial Ownership**  
24 **Consultation Submission, Deloitte (Peter Dent),**  
25 **2020 (redacted)**

1 MR. MARTLAND:

2 Q And what I'd like to do next is ask Mr. Cohen  
3 really a parallel question using tab 16. And I  
4 think the format that we have these documents is  
5 that we also have the covering email, so to  
6 speak. So we see an email from Sasha Caldera  
7 enclosing, if we turn to page 2, the letter date  
8 of March 13, 2020.

9 Mr. Cohen, is this the submission made to  
10 the provincial government from the End  
11 Snow-Washing Coalition? You're muted, sir.

12 A (JC) Yes, it looks like it. Yes.

13 Mr. Martland: So I think, Mr. Commissioner, if I  
14 could ask this please become exhibit 286.

15 THE COMMISSIONER: 286.

16 THE REGISTRAR: 286.

17 **EXHIBIT 286: BC Beneficial Ownership**  
18 **Consultation Submission, TI Coalition, 2020**  
19 **(redacted)**

20 MR. MARTLAND:

21 Q Mr. Taggart, you've been hearing us speak about  
22 the province of British Columbia and getting a  
23 sense of efforts that are underway here. From  
24 your point of view -- you've spoken already  
25 about some different parts of the world. We'd

1 appreciate you speaking to lessons that Canada  
2 and British Columbia can take from other  
3 jurisdictions that you think are relevant to our  
4 consideration of a BOT register?

5 A (CT) Absolutely. Sorry. Can I just check that  
6 you can hear me okay? The -- I switched  
7 microphones.

8 Q Yes.

9 A (CT) Yes. Well, the UK is a great example, and  
10 not because it does everything right but because  
11 the approach they've taken was both an open and  
12 an iterative one. And so it provides numerous  
13 lessons about how do to beneficial ownership.  
14 And, you know -- so, firstly, they've collected  
15 this structure data. They don't ask people to  
16 just provide documents or things like that.  
17 They collect structured data. They also have  
18 made it -- they made it public from day one.  
19 They've got a good technology operation there  
20 and they've been -- they worked hard to make  
21 sure that this was -- even aside from the legal  
22 side that Companies House worked hard to make  
23 sure that this would work for the -- both the  
24 companies submitting information and for people  
25 needing to get that information. So -- and

1                   similarly at the legal side. You know, one of  
2                   the things that the UK government did right from  
3                   the beginning was understand two critical  
4                   aspects. One is that they won't be able to on  
5                   their own just get all the answers right. This  
6                   isn't something you can just pluck out of the  
7                   air. Some of these are tricky questions.  
8                   Tricky practical questions, tricky legal  
9                   questions. And, you know, what do we do about  
10                  sort of unincorporated entities, arrangements,  
11                  things like this. There are some challenges  
12                  issues here.

13                         Some of them are ones which are tricky both  
14                         in the conceptual and practical issues, things  
15                         like verification and validation and so on. So  
16                         what they did, I think they did -- firstly they  
17                         took that first step. They were the first in  
18                         the world and that takes, you know, both  
19                         commitment and courage, you know, not because  
20                         they were doing something that was -- you know,  
21                         took courage to do insofar, but just being the  
22                         first in the world to do that.

23                         And then they approached that by saying, we  
24                         will also do this in public. And so they've  
25                         done numerous consultations talking about the

1                   different options. At every stage civil society  
2                   has been involved to get their feedback and  
3                   business and data users and so on. And over the  
4                   last -- you know, and one of the things they did  
5                   which they took a deliberate decision to do was  
6                   to put as much in secondary legislation as they  
7                   could so that -- knowing that they would make --  
8                   that they wouldn't get it right the first time,  
9                   and whether it's things like penalties or  
10                  thresholds or ways of collecting the data or the  
11                  scope, if it could go in the secondary  
12                  legislation, it would go in the secondary  
13                  legislation. And so -- and that's allowed them  
14                  to iterate relatively easily. Obviously it's a  
15                  lot easier to pass secondary legislation.

16                               And then finally they said, we genuinely  
17                               want people to use this data. And so they made  
18                               it available not just for free on the web. You  
19                               know, firstly they made it available on the web,  
20                               but then they made it available for free on the  
21                               web. And then they also made it available as  
22                               open data. So anyone can download this and  
23                               incorporate it, and people incorporated it. You  
24                               know, they did -- Global Witness, ourselves,  
25                               others did analysis on it, identified problems

1                   with it. And when then we told them the  
2                   problems, their reaction was great; thank you  
3                   for telling us; now let's work out together how  
4                   we can fix some of these problems.

5                   Numerous companies, thousands and thousands  
6                   of companies are using this data in their due  
7                   diligence work flows and in investigation  
8                   systems because the real power comes when you  
9                   combine this sort of data with other data to  
10                  find that -- with contracting data, for example,  
11                  with sanctions data, with data from other  
12                  reports so that you can find anomalies, you can  
13                  find connections which you would otherwise hide.  
14                  You could find patterns of people using  
15                  corporate structures or those sorts of things.  
16                  And we've seen this happen again and again.

17                  But I -- they have been quite rightly  
18                  criticized for not -- first of all, not  
19                  validating and then not verifying, and they're  
20                  now working towards that. So every single step  
21                  of the way they've taken an approach of, we  
22                  won't get everything right, but we are  
23                  determined to do so in an iterative way, and  
24                  have worked with every single stakeholder in  
25                  order to do that.



1 complete new invention -- that's the worst  
2 thing -- but because you've looked at theirs,  
3 identified issues, identified ways it could be  
4 done better and improved.

5 Q A deliberate departure from the mould that was  
6 cast.

7 A (JC) Absolutely.

8 Q And so with a view to getting a sense of how  
9 some other jurisdictions have been coming to  
10 grips with these issues, I'd like to go over a  
11 few documents.

12 MR. MARTLAND: And, Madam Registrar, so you know  
13 what's coming, I'll go to tab 11 and, after  
14 that, 12 and 13.

15 Q Tab 11, Mr. Taggart, when it comes on screen  
16 you'll recognize the OpenCorporates report from  
17 2020 "EU Company Data: State of the Union."

18 A (CT) Absolutely.

19 MR. MARTLAND: I'll ask, please, that in this  
20 document be marked as next exhibit.

21 THE COMMISSIONER: Very well.

22 THE REGISTRAR: Exhibit 287, Mr. Commissioner.

23 THE COMMISSIONER: Thank you.

24 **EXHIBIT 287: OpenCorporates, EU Company Data:**  
25 **State of the Union 2020 - How Poor Access to**

1                                   **Company Data is Undermining the EU, 2020**

2                   MR. MARTLAND: And if we go, please, to page 4.

3                   Q     Under the executive summary and simply glancing  
4                                   along here in description of official company  
5                                   data in the EU some of the highlighted points  
6                                   here: poor overall performance exemplified by  
7                                   Spain at zero Austria at zero, Italy at 10;  
8                                   little improvement over the past eight years; no  
9                                   progress over the last three; EU single market  
10                                  undermined by poor access.

11                                  And then we see within that, if I could just  
12                                  underline this point, second sentence:

13                                  "Yet access to the fundamental business  
14                                  dataset - companies and company  
15                                  ownership - is restricted not to those who  
16                                  most need to use it, but to those who can  
17                                  afford to pay the very considerable cost,  
18                                  undermining both the practice and the  
19                                  concept of the single market."

20                                  I'm just reading on to touch on some other  
21                                  bullet points here. Illicit activity is free to  
22                                  proliferate whilst access is poor. Corporate  
23                                  accountability deficit widens. That says  
24                                  it's -- it notes that that's powered by the EU  
25                                  COVID-19 financial aid. And efforts to restrict

1 access are persisting, indeed growing in some  
2 states. Finally, the open data directive is an  
3 opportunity for improvement despite efforts to  
4 undermine it.

5 So that really compresses a great deal of  
6 information from this report but some of the key  
7 holdings from this analysis of the EU company  
8 data.

9 A (CT) Yes, it does. And this was about company  
10 data in general. And I've actually done -- we  
11 did some research last week on using the  
12 BC company register in a wider sense, and I can  
13 share that with you when it's convenient.

14 Q I don't think I can resist that because that  
15 sounds something new and relevant, so why don't  
16 you launch into that right now. Thank you.

17 A (CT) Well, one of the things of course is that  
18 what we're talking about when we're talking  
19 about beneficial ownership is who actually --  
20 you know, is who ultimately controls and  
21 benefits from the companies, but actually what  
22 even companies exist is the starting point.

23 At OpenCorporates we collect official  
24 company information from registers around the  
25 world, around about 135 or so at the moment, and

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1                   we pull that in one data set and it's used by  
2                   over 5 million people at the moment: law  
3                   enforcement, journalist, tax authorities,  
4                   anti-corruption investigators, [indiscernible]  
5                   professionals, investigators, asset recovery  
6                   lawyers, you name it.

7                   And, you know, just as a -- in preparation  
8                   for this session I thought I would go back and  
9                   revisit and look at how easy or difficult it was  
10                  to get information from the British Columbia  
11                  company register. And so last -- on Friday last  
12                  week I, as a benchmark, if you like, I looked at  
13                  the -- I looked for a company in the UK, an  
14                  arbitrary company, a Microsoft company in the  
15                  UK, and actually it took me less than 30 seconds  
16                  to get the information on that company. And not  
17                  just what the company was, when it was  
18                  incorporated but also what the -- who the  
19                  directors were, who were the previous directors,  
20                  who the beneficial owners were. In fact in that  
21                  case they refer you to Microsoft Corporation,  
22                  which is the parent company, but also every  
23                  single filing, including financials, all  
24                  available. And I got that information and could  
25                  download any one those for free without even

1                   having to register in about 30 seconds.

2                   So I didn't necessarily expect BC to be the  
3                   same, but I hadn't -- to be honest I hadn't  
4                   accepted it to be quite so challenging as it  
5                   was. And, you know, bear in mind I -- you know,  
6                   I've spent a fair chunk of the last ten years  
7                   looking at company -- navigating my way around  
8                   company registers and understanding them.

9                   So, first of all, I went to the company  
10                  register and, you know, we score it -- by the  
11                  way, we score it zero out of 100 on the Open  
12                  Company Data Index. That's a measure of how  
13                  open -- how accessible company data is in every  
14                  jurisdiction in the world.

15                 Q     And if I can just make sure I have that right.  
16                         When you say we score it at zero, those are  
17                         scores that include not just simply nation by  
18                         nation but British Columbia as a jurisdiction on  
19                         its own scored it at zero?

20                 A     (CT) Absolutely. Yes. And to get any points  
21                         you actually just need to make the register  
22                         searchable without registration or fee. So  
23                         Canada actually averages -- across Canada,  
24                         including the federal register, averages 16 out  
25                         of 100, which is poor. The EU averages in the

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James Cohen (for the commission)  
Peter Dent (for the commission)  
Chris Taggart (for the commission)  
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1                   20s. Similarly, the US. Some countries score  
2                   80, 90 even.

3                   But -- so we'd scored it zero out of 100.  
4                   And firstly I just wanted to make sure that we  
5                   absolutely were scoring it right. So I went to  
6                   the BC company register to try to test that  
7                   system, try to get information on one arbitrary  
8                   company and -- even if I had to register or pay  
9                   for the information just to see how easy it was  
10                  to actually find out information about the  
11                  company. Ideally the directors and shareholders  
12                  the financials too, but just -- let me just see  
13                  how far I could go.

14                  And, first, it's a really convoluted  
15                  experience. You go to one page, it links to  
16                  another, you go to another page and it's really  
17                  not clear exactly where you're supposed to be  
18                  searching and what you're supposed to be doing.  
19                  But finally I got to a page and it said okay,  
20                  you need to be a registered customer or you can  
21                  use -- or you can use credit cards. And to be a  
22                  registered customer it says you require an  
23                  opening deposit of 100 Canadian dollars. It's  
24                  required from customers with Canadian bank  
25                  accounts to open a new account. For US or

1 international customers without a Canadian bank  
2 account a minimum deposit equivalent to 150  
3 Canadian dollars is required. The account will  
4 be activated once the initial funds have been  
5 deposited. An appropriate authority must sign  
6 the application and applicable EFT forms.

7 And so what that seemed to be saying to me  
8 is before you could even search to see if a  
9 BC company exists, let's say you are considering  
10 doing business with a BC company that approached  
11 you to be a client of yours or you're doing a  
12 law enforcement investigation, that before you  
13 can even see if that company exists, never mind,  
14 you know, any of the other information, you have  
15 to pay \$150. And not just to pay \$150, you have  
16 to put \$150 by doing a wire transfer and then  
17 check if it's been received. And then -- only  
18 then, a few days later, can you actually get an  
19 account and only then after having that account  
20 can you do this.

21 So there was a section called "credit card  
22 products," but this just appeared to be making  
23 filings on behalf of companies or even  
24 incorporate them, but not for searching. So it  
25 seemed that if you've got a credit card, you can

1                   incorporate a company but you can't actually  
2                   find out if a company exists, still less who is  
3                   behind it.

4                   So if I was listening to this hearing today  
5                   and I was a criminal, I'd be thinking that  
6                   BC companies are definitely good option for  
7                   companies for money laundering because frankly,  
8                   you know -- if I'm overseas, that is, because  
9                   frankly the chances of a UK law enforcement or  
10                  still less a Kenyan investigator or journalist  
11                  or law enforcement anywhere, you know, actually  
12                  getting to passing through all of these hurdles  
13                  would seem to be -- would be pretty remote and  
14                  they would probably give up.

15                  I'd spent about 20 minutes, half an hour  
16                  doing that. But I don't give up easily, so I  
17                  tried to call them, and it was about 8 a.m. and  
18                  there was nobody was there. There was an  
19                  answering machine saying there would be someone  
20                  there for 9 a.m. So I called them to see if I  
21                  was missing something. I didn't want to be  
22                  misrepresenting it. And I spoke to this person.  
23                  You know, I called again at 9 a.m. and spoke to  
24                  this person they said well, it's not actually  
25                  possible to get company information on the

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1 register online unless you've got an account,  
2 one of the special accounts; and there is a site  
3 called OrgBook -- which is sort of, as I  
4 understand it, an experimental site for testing  
5 out blockchain and similar systems -- there is a  
6 site called OrgBook, but it doesn't really have  
7 any information apart from just a company name  
8 and an incorporation date and so on, so I think  
9 your best bet is to use, you know, an agent; you  
10 know, I can give you the name of this company  
11 that does it; they sometimes take a couple  
12 of days to get back to, if you leave a number;  
13 they might take a couple of days to get back to  
14 you and -- or you could -- if it's not urgent,  
15 you could write a letter to the registry  
16 enclosing a cheque for 10 Canadian dollars, and  
17 then they would post the information back.

18 So it's -- you know, so what we have here is  
19 one where just this basic information is  
20 incredibly hard to find and I genuinely can't  
21 think of any reason why you would want to make  
22 it so difficult to do. And when I looked on the  
23 company register's, you know, news sites and so  
24 on, I wondered if it was -- you know, I wondered  
25 if they were being starved of money or they

1                   didn't have enough money and so on, but they  
2                   seemed to be making improvements, all around  
3                   making it easier to register and to be able to  
4                   register different types of companies, nothing  
5                   about making access to this data.

6                   And maybe I wondered if it was -- I wondered  
7                   if it was about making money, that this was a  
8                   profit -- you know, essentially treated as a  
9                   profit-making venture. And I spent about  
10                  another hour looking for the accounts, the --  
11                  any KPIs that they kept, anything like that,  
12                  even going through ministry accounts to try to  
13                  find that, and I could not find a budget for the  
14                  BC company register.

15                  So all in all, you know, I think there's a  
16                  tremendous opportunity around beneficial  
17                  ownership in BC not least because of this  
18                  commission, which is truly exciting. But there  
19                  is a long, long way to go because we're not --  
20                  you know, I've been to -- seen many, many  
21                  developing world countries their registers, you  
22                  know, Myanmar, you know, South American  
23                  countries, all sorts of places where the --  
24                  accessing the basic company information is much,  
25                  much easier than that, and that's a real shame

1                   and it really does create a great fertile ground  
2                   for bad actors.

3           Q       Well, thank you for having undertaken that  
4                   research and sharing it with us.

5           MR. MARTLAND: Madam Registrar, I don't think we need  
6                   this document displayed at present.

7           Q       Mr. Dent, I saw you unmute. I don't know if I'm  
8                   reading into your decision to unmute, or if you  
9                   had a comment.

10          A       (PD) My only -- well, of course I agree with  
11                   what Mr. Taggart has talked about. The  
12                   unfortunate consequence of the requirement and  
13                   the -- sort of the lack of uniformity across the  
14                   jurisdictions in Canada and how you can access  
15                   this data and what data you can access and how  
16                   easily it can be accessed is that it's created a  
17                   private sector opportunity where companies  
18                   manage this on behalf of their clients. And  
19                   that -- and so when people talk about the costs  
20                   or the burdens of business -- of registering or  
21                   completing beneficial ownership information,  
22                   many times they lose sight of the real  
23                   consequences that we're incurring right now for  
24                   private companies in terms of just doing  
25                   standard due diligence around who they're doing

1                   business with and how incredibly difficult it  
2                   is. And the cost of doing it, because they need  
3                   to go to a private sector entity to gather all  
4                   of this information on their behalf, is  
5                   extraordinarily more than what the cost of just  
6                   having that information or sharing that  
7                   beneficial information upfront would be.

8                   So that many times is lost in that  
9                   discussion, but Mr. Taggart has done an  
10                  excellent job at basically giving a real world  
11                  example of how that cost to doing business in  
12                  British Columbia is a real consequence here.

13                Q    Ms. Johnson or Mr. Cohen, anything to add on  
14                  this topic before I move to another report?

15                A    (JC) Yeah. I'll just chime in. And again thank  
16                  you to Mr. Taggart for doing such a thorough,  
17                  time-consuming experiment on how to -- in how to  
18                  register BC's registry or lack thereof.

19                  And also I agree completely with Mr. Dent's  
20                  comments on the burden to business.

21                  This is -- if we go back to the conversation  
22                  of where this -- of where the beneficial  
23                  ownership transparency conversation is at in  
24                  Canada, if we look at it from the business  
25                  perspective, it's often discussed as we're not

1                   at a point of if we should have a registry, but  
2                   when and what type of registry. This is -- you  
3                   know, I'm quoting here from many conversations  
4                   I've heard. And there's this idea that it's all  
5                   looking from just a large institution point of  
6                   view. As long as our banks have access to this  
7                   information that's fine. But we have to think  
8                   about how much of a level playing field is  
9                   created by creating accessible information, as  
10                  Mr. Taggart points out.

11                  So, for example, there was an update in the  
12                  Gazette that the PCMLTFA will be updated so that  
13                  other non-designated financial persons and  
14                  businesses have obligations on beneficial  
15                  ownership reporting. So that's every  
16                  accountant, every real estate agent, money  
17                  service business, precious metals as well.  
18                  Sure, the large accounting firms and the large  
19                  real estate agencies can have access but once we  
20                  go down to individual accountants and real  
21                  estate agents, that's becoming a burden on them  
22                  if they have to go through the kind of hoops  
23                  that Mr. Taggart has expressed.

24                  If we go to small-, medium-sized enterprises  
25                  within Canada who have to fill out multiple

1 forms to different banks, to different insurance  
2 agencies, different accountants every time that  
3 they want to onboard as a client to establish  
4 their beneficial ownership information, that's a  
5 burden to them, as opposed to uploading that  
6 information one time in a publicly accessible  
7 registry of beneficial ownership. That's also  
8 the levelling of the playing field for those  
9 small-, medium-sized enterprises to be able to  
10 conduct their own due diligence as opposed to  
11 having to outsource that service to businesses  
12 who would pay -- who would cost a lot of money.

13 We're seeing a lot of -- we're hearing  
14 examples in headlines right now during COVID-19  
15 of predators trying to create false contracts,  
16 to create false clients, to create false  
17 business opportunities that were already  
18 occurring before COVID-19, but in everyone's  
19 desperation right now that's being exploited.  
20 So why should large companies who have in-house  
21 counsel and access to due diligence be the only  
22 ones being able to access that information as  
23 opposed to having to go through the hurdles that  
24 Mr. Taggart has pointed out?

25 And so we just see more and more on even the

1                   business side of having this. And then finally,  
2                   if we even look at -- speaking of Mr. Taggart  
3                   being in the UK, there's announcements that  
4                   started last week of trade negotiations going on  
5                   between Canada and the UK and even trade  
6                   negotiations between ourselves and the European  
7                   Union. How long it going to be before all of a  
8                   sudden our partners say, why is it that Canadian  
9                   companies have an unfair advantage in looking at  
10                  the beneficial ownership information of our  
11                  companies to conduct their business but our  
12                  companies don't have that same advantage to look  
13                  at their companies?

14                   So going back to the conversation on where  
15                   are we moving internationally. If more and more  
16                   countries start putting in that access to  
17                   beneficial ownership information within trade  
18                   deals, we all of a sudden become a less  
19                   opportune business partner to conduct trade  
20                   negotiations with.

21                  Q    Ms. Johnson?

22                  A    (MJ) Yeah. No, this is actually a really useful  
23                   discussion about the status quo and where we  
24                   are. And I just wanted to really briefly add to  
25                   those excellent points and say that even for a

1                   small business owner or a consumer who wants to  
2                   take a business to small claims court, for  
3                   example, which is intended to be cheap and  
4                   accessible and not complex, just finding out who  
5                   the legal entity is that you need to sue behind  
6                   the business name, you might end up having to go  
7                   through the kinds of hurdles that Chris Taggart  
8                   is talking about or at the very least maybe go  
9                   through an expensive paywall just to get basic  
10                   information about the corporation, let alone  
11                   beneficial owner information.

12                                 And indeed, as we discussed earlier, a lot  
13                   of the risks are shifted onto creditors and  
14                   consumers and others. And if you can't even  
15                   find out the name of the -- the actual legal  
16                   name of the company, that's a real disadvantage.

17                   Q     Mr. Taggart, before you took us into your  
18                   Friday research undertaking I was working my way  
19                   through a few documents. I'd like to complete  
20                   that little task.

21                   MR. MARTLAND: If we could please look at tab 12,  
22                   Madam Registrar.

23                   Q     It's a further 2020 OpenCorporates report, this  
24                   dealing with US company data. And I won't --  
25                   first I'll just pause to ask do you recognize

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1                   that?

2           A       (CT) Yes.

3           MR. MARTLAND: I'll ask that please become the next  
4                   exhibit, Mr. Commissioner.

5           THE COMMISSIONER: Thank you.

6           THE REGISTRAR: Exhibit 288, Mr. Commissioner.

7           THE COMMISSIONER: Thank you.

8                   **EXHIBIT 288: OpenCorporates, US Company Data:**  
9                   **State of the Union 2020 - How Accessible is**  
10                  **Official Company Register Data in the US, 2020**

11          MR. MARTLAND:

12          Q       And just to summarize one part of it that the  
13                   United States scores -- although there's  
14                   differences. For example, Washington State  
15                   scoring well, Illinois and Delaware and others  
16                   scoring poorly. And on average about 31 out of  
17                   100, which one could compare to China at 29 out  
18                   of 100 but below Russia at 40 out of 100. Do  
19                   those sort of numbers sound accurate from this  
20                   report?

21          A       (CT) They do.

22          MR. MARTLAND: If I could please look next to tab 13.

23          Q       Mr. Taggart, I'll ask you also. This is a  
24                   document from March 2019 and it's from the UK  
25                   Department For Business, Energy and Industrial

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1                   Strategy called "The Review of the  
2                   Implementation of the PSC Register." Do you  
3                   recognize that report?

4           A        (CT) I do.

5           MR. MARTLAND: I'll ask this please become  
6                   exhibit 289.

7           THE COMMISSIONER: Very well. Thank you.

8           THE REGISTRAR: Exhibit 289.

9                   **EXHIBIT 289: UK Department for Business, Energy**  
10                   **and Industry Strategy Review of the**  
11                   **Implementation of the PSC Register, March 2019**

12          MR. MARTLAND:

13          Q        And in essence, or in a simple way, this deals  
14                   with the UK's PSC, meaning people with  
15                   significant control, register created in 2016,  
16                   the report done about three years into the  
17                   lifespan of it considering overall levels of  
18                   engagement, effectiveness, the financial costs  
19                   of the PSC register, compliance and the like?

20          A        (CT) It does, yes.

21          Q        And what does this report tell us about, for  
22                   example, the question of compliance costs with  
23                   the PSC register in the UK?

24          A        (CT) Well, I think it's -- you know, it's clear  
25                   from the report and also from experience that

1                   we've had in talking to many, many different  
2                   organizations that the cost of compliance is  
3                   incredibly low. It's effectively for a simple  
4                   company -- that's what I talked about before,  
5                   you know, a smaller, medium enterprise that just  
6                   has the shareholders and directors, the  
7                   beneficial shareholders are the same, is very  
8                   simple and it's a tick box exercise more or  
9                   less. It adds maybe five minutes to the -- you  
10                  know, your accountant will submit this and it  
11                  maybes adds five minutes to the process. Of  
12                  course it adds a little bit and there's  
13                  complexity when you have really complex  
14                  companies, but, you know, that is the trade-off  
15                  they make. They've introduced that complexity  
16                  and that's the trade-off.

17                  And I think that the -- it's really clear  
18                  about the -- you know, there have been  
19                  significant benefits, and I think it's also  
20                  clear that this is a journey and that they have  
21                  listened. And so, you know, one of the things  
22                  that's being worked on at the moment is issues  
23                  about -- you know, they've already introduced a  
24                  lot of stuff around validation and they're now  
25                  working on issues around verification. So I

1 think that it's an excellent summary of both the  
2 fact that this isn't an overwhelming -- you  
3 know, an overwhelming burden.

4 And actually just to back up what Mr. Cohen  
5 said, you know, this is information that every  
6 business -- when you are thinking of doing  
7 business with somebody else or maybe you're  
8 thinking of working for another company, you  
9 know, this is the information that you need in  
10 order to make an informed decision about that.  
11 And so by making that more difficult -- if I was  
12 a small company, you know, let's say, even  
13 outside of -- in Washington State and thinking  
14 of doing business with a BC company, you know,  
15 that's -- or another company in another part of  
16 Canada, those sorts of frictions, you know,  
17 those sorts of difficulties are things which  
18 really cause issues for SMEs. And frankly they  
19 often give up. They say, we're not going to do  
20 business with that company, or we're not going  
21 to do due diligence; let's just take a fly on  
22 it; they seem okay. And that's not something we  
23 want them to be doing because actually, you  
24 know, we don't want them to be fleeced out of  
25 money by fraudsters or to be inadvertently doing

1                   business with sanctioned companies or, you know,  
2                   any of the other -- the downsides.

3                   So I think that the -- it's really clear  
4                   that there has been real benefits and that  
5                   the -- both the cost has been low, but also  
6                   the -- you know, there was a -- I remember I was  
7                   at an open government partnership event on the  
8                   pound when the UK government announced that they  
9                   were going to be doing this register. And there  
10                  was someone from the United States basically  
11                  saying, this will never see the light of day;  
12                  you will never ever have a public beneficial  
13                  owner register; I guarantee it; it's going to be  
14                  too difficult to do; it's going to be too  
15                  expensive; you will never see -- it will never  
16                  see the light of day.

17                  And actually it wasn't easy, but it's not  
18                  something like -- I don't know -- speech  
19                  recognition or, you know, any of those really  
20                  hard computing things. This is a thing that can  
21                  be done and it is being done and we are seeing  
22                  significant benefits from it.

23                  Q     Thank you.

24                  MR. MARTLAND: Madam Registrar, I think we can take  
25                  down that document.

1           Q     Mr. Dent, we were touching on the question about  
2                    the costs of compliance, and one question that  
3                    occurred to me is the costs or the consequences  
4                    in particular to financial institutions of  
5                    compliance. If you could comment on that,  
6                    please.

7           A     (PD) Sure. So the issue in Canada I just want  
8                    to give a little bit of context to this. So  
9                    for -- the issue in Canada is -- at a high level  
10                   is the way we've structured our anti-money  
11                   laundersing compliance regime. So there's a  
12                   great deal of onus placed on financial  
13                   institutions in Canada and, now, it's  
14                   understandable in that -- it's that they collect  
15                   a lot of information around transactions, so  
16                   they are a unique position to identify  
17                   transactions that are of a higher risk to the  
18                   government. But for better or worse in Canada  
19                   what we've decided is in essence we've offloaded  
20                   responsibility for anti-money laundersing or for  
21                   money laundersing detection to the financial  
22                   institutions. And as a result of that, they are  
23                   spending hundreds of millions of dollars a year  
24                   in order to comply. And the reason that the --  
25                   one of the reasons that they spend hundreds

1                   of millions of dollars a year to comply with our  
2                   anti-money laundering legislation in Canada is  
3                   that when Canada decided that it would put in an  
4                   anti-money laundering regime that required  
5                   financial institutions to identify or identify  
6                   to them or to FINTRAC higher risk  
7                   institutions -- or higher risk transactions, it  
8                   did not put into place a system that would allow  
9                   them to more easily access the information  
10                  around who they were conducting business with;  
11                  who were the individuals behind those  
12                  transactions.

13                   And so therefore -- and as I've sort of  
14                   mentioned earlier, I talked about the lack of a  
15                   single point of reference with respect to  
16                   beneficial ownership transparency in Canada and  
17                   for all of the reasons I enumerated earlier.  
18                   FIs are left with a system where in many  
19                   respects requires a personal attestation of  
20                   their clients to basically identify themselves  
21                   as the beneficial owner.

22                   Now, for the vast majority of Canadians  
23                   that's fine. The vast majority of Canadians are  
24                   honest, have no reason to hide their beneficial  
25                   ownership of a corporate entity or private

1                    company. But for those that wish secrecy for  
2                    nefarious reasons, they may not articulate that  
3                    information accurately to the financial  
4                    institutions or after setting up a company,  
5                    taking in their articles of incorporation, they  
6                    may sell that company to a third party but never  
7                    update the corporate record with respect to  
8                    that. So they become, in essence, the nominee.  
9                    They weren't always the nominee and originally  
10                   they may have been the shareholder, but they  
11                   become the nominee and so therefore the  
12                   financial institution is not necessarily aware  
13                   of that going forward.

14                         So the value -- it's a long way of putting  
15                         it, but basically the value to the financial  
16                         services industry of, you know, an accurate  
17                         dependable, independently verified record of  
18                         beneficial ownership is that they would have  
19                         that single source to be able to go to to do  
20                         their due diligence requirements under the money  
21                         laundering legislation in Canada. And it would  
22                         create an efficiency within the industry but  
23                         also for Canadians in general in that even when  
24                         I -- you know, when I go into a financial  
25                         institutions to set up a company, there is a

1                   burden put on -- placed on myself in terms of  
2                   all of the documentation, all of the forms that  
3                   I need to sign, all of the information I must  
4                   provide to them so that they can become  
5                   comfortable under the legislation in Canada that  
6                   I am who I say I am, and I am the beneficial  
7                   owner of this entity.

8                   So it would, in effect, create an efficiency  
9                   that we don't currently see across Canada. I'm  
10                  not saying it would be an easy task, but I think  
11                  it would be a worthwhile one.

12                Q    I'd like to turn to some of the specific issues  
13                  in thinking about the design of and creation of  
14                  a BOT registry. And maybe I'll start,  
15                  Ms. Johnson, if I might, with you. If you'd  
16                  prefer to defer on to someone else, I don't  
17                  think we have a shy group of people here, so ...

18                  But the question would be this, to start  
19                  with the topic of threshold. So we've heard  
20                  reference to a 25 percent versus a 10 percent  
21                  ownership stake, I suppose, as being what  
22                  triggers someone's obligation to have their  
23                  information included on a register. Do you have  
24                  views on how we should be thinking about that  
25                  question of threshold of ownership amount?

1           A       (MJ) Yeah. And I guess before I get to the  
2                   specific question about ownership of, you know,  
3                   voting shares I wanted to kind of take one step  
4                   backward and just refer back to a conversation a  
5                   little bit earlier that we had, and Chris  
6                   Taggart was talking about ownership and control  
7                   and benefit and really understanding, you know,  
8                   when we think about what is a real definition of  
9                   beneficial ownership that would function well to  
10                  capture the people that we're thinking of.

11                         And so I guess I just wanted to say we do  
12                         need to think more -- we do need to think  
13                         carefully about a flexible and open-ended  
14                         definition that would capture a whole variety of  
15                         owners and controllers and business types. I  
16                         think, as Chris said, most companies are quite  
17                         simple, so the shareholders are simply the  
18                         owners. But you get to more complex  
19                         corporations. I know Peter talked about this as  
20                         well. It is more accurate to say that  
21                         shareholders enjoy a specific bundle of rights.  
22                         These would typically include voting rights,  
23                         right to dividends and a proportion of assets  
24                         and it gets less accurate to call them "owners"  
25                         as the corporation becomes more complex and the

1                   number of shareholders is bigger.

2                   And in fact in a larger -- the larger the  
3                   corporation, the greater the control that a  
4                   director is likely to exert over a corporation.  
5                   This is particularly the case in widely-held  
6                   corporations with a high number of shareholders  
7                   and poor sort of collective action by  
8                   shareholders over the corporation. So it's  
9                   really important to make sure that directors are  
10                  listed as beneficial owners. Corporate  
11                  directors.

12                Q    If I can just pick up on that. I hear you, I  
13                    think, quite defensively arguing with the  
14                    question in the sense of saying it's not -- it  
15                    shouldn't simply be a matter saying 10 percent,  
16                    25 percent ownership of shares or number of  
17                    shares percentage, but rather what should we be  
18                    thinking about when we're trying to get to the  
19                    question of who controls and who benefits from  
20                    that company. That's what we need to know  
21                    rather than some mathematical cut-off or  
22                    accounting of proportion of shares.

23                A    (MJ) That's right. That's right. So I think --  
24                    I mean, really when we go into definitional  
25                    issues, we do need to think more broadly about

1 capturing sort of the whole variety of  
2 characters that might own or control or benefit  
3 from a corporation.

4 I would say that with regard to the  
5 percentage of owning shares held and the  
6 definition, reducing the current ownership  
7 threshold of 25 to 10 would be something I would  
8 support. There is a risk -- I think Chris  
9 Taggart mentioned this -- that a lower  
10 25 percent share would still be significant -- a  
11 significant share. A 10 percent threshold would  
12 have the benefit of capturing information on a  
13 larger number of company owners, and it's not  
14 clear there are any compelling negative  
15 consequences.

16 Again, the information that's come out of  
17 the UK has shown that it's actually quite a  
18 light reporting burden to figure out who the  
19 beneficial owners are. So for the vast  
20 majorities of companies who hold maybe one or  
21 two or three directors and shareholders, it  
22 would be a really straightforward matter to  
23 lower that threshold and it wouldn't increase  
24 the reporting burden very much.

25 So I would say the complexity -- more

1 complex business structures may -- that lowering  
2 that threshold may create a greater reporting  
3 burden, but in all likelihood that would be for  
4 larger corporations that could manage that  
5 reporting burden and much less likely for small  
6 or micro businesses.

7 Q Do other panel members have views on that  
8 question, first -- the first part of it in terms  
9 of whether it's beyond simply percentage of  
10 voting shares, but secondly on the 10 versus 25  
11 versus some other cut-off number for the  
12 threshold to qualify as a beneficial owner for  
13 the purpose of a register?

14 A (JC) Yeah, I might chime in here and just say  
15 often the 25 percent number is brought up but  
16 it's something of an arbitrary number. It  
17 was -- and maybe Mr. Taggart can even correct  
18 me or fill in the blanks on the history of this,  
19 but I think it just kind of came up as a target  
20 number in the initial discussions of the PSC and  
21 it's been challenged or kind of questioned in a  
22 number of venues even in the US by law  
23 enforcement there as to why 25 percent, and  
24 there's even other registries that go lower than  
25 10 percent.

1                   So I think having that 25 percent as a  
2                   starting point, we should maybe even think about  
3                   just dismissing it and look at what is the best  
4                   option as it's quite arbitrary. Now, if we even  
5                   look at what to publish, if we look at other  
6                   registries, like, say, in Sweden, they not only  
7                   publish -- they do use the 25 percent threshold,  
8                   but then they also publish what percentage an  
9                   owner has whether -- after 25 percent, whether  
10                  it be 26, 30, 80 percent. So there's that  
11                  greater distinction. And within the UK persons  
12                  of significant control registry is put into ban,  
13                  so if you're 25 to 50 or 50 percent over. So  
14                  there's even more identification there.

15                  (PD) The only comment I would make, Brock,  
16                  is that the uniformity around what percentage is  
17                  landed upon is very, very important. So, for  
18                  example, we cannot have the Land Owner  
19                  Transparency Act set a threshold at 10 percent  
20                  where it's reportable, and then the federal or  
21                  provincial corporations registry, BC private  
22                  companies registry, set it at 25 percent. It  
23                  would defeat the purpose of creating a  
24                  Pan-Canadian publicly available registry and  
25                  just add to the further complexity of having to

1 parse data that is not consistently collected  
2 across the country. So that's my only comment  
3 on the topic.

4 Q I suppose that gives rise to the double-edged  
5 sword of a high common denominator or the lowest  
6 common denominator in the sense that a standard  
7 could be diluted because it needs to be adopted  
8 across a number of jurisdictions, potentially.

9 A (PD) It's the reality of the Canadian system.  
10 It's a federal system and it's a federation and  
11 therefore we have, you know, 13 jurisdictions  
12 that must be navigated and we need uniformity  
13 for this sort of regulatory or legislative  
14 environment to work.

15 MR. MARTLAND: Mr. Commissioner, this might be a  
16 useful moment for the break, please.

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

19 THE REGISTRAR: This hearing is adjourned for a  
20 15-minute recess until 11:31 a.m. Please mute  
21 your mic and turn off your video. Thank you.

22 **(WITNESSES STOOD DOWN)**

23 **(PROCEEDINGS ADJOURNED AT 11:16 A.M.)**

24 **(PROCEEDINGS RECONVENED AT 11:30 A.M.)**

25 THE REGISTRAR: Thank you for waiting. The hearing



1                   to come in, if you will, at a normative level  
2                   what you think should be the way that a registry  
3                   is set up and put into place, but bearing in  
4                   mind the context here obviously is looking at  
5                   the province of British Columbia within the  
6                   Canadian context.

7                   So with respect to the scope of who's  
8                   included in a beneficial ownership registry,  
9                   should it be all companies; should it be other  
10                  legal entities, such as trusts, partnerships;  
11                  are there particular issues or complications  
12                  that arise, for example, for trusts that don't  
13                  arise for companies?

14                  Maybe I'll start with Mr. Taggart and then  
15                  work through other panel members with that.

16                  A     (CT) Yes. I'll try to be brief. It definitely  
17                  should include all companies, including  
18                  private -- including public companies.  
19                  Generally public companies have to disclose more  
20                  information than private companies and I see no  
21                  reason why they shouldn't be and many, many,  
22                  many reasons why they should make the same level  
23                  of disclosures. Of course, you know, there  
24                  would be a de minimus level, whether it's  
25                  10 percent or whatever that would be, where they

1                   wouldn't have to update every time, a small  
2                   shareholder or whatever. But, you know,  
3                   1 percent in a public company is a -- you know,  
4                   is a huge amount. So I don't think that there's  
5                   any reasons why public companies should be  
6                   excluded, and increasingly we're seeing IPO for  
7                   it and other aspects around public companies and  
8                   around the companies that they own as well being  
9                   used for problematic purposes.

10                                 In the scope of -- in terms of legal  
11                   entities, so those things with a distinct legal  
12                   personality, whether they are traditional  
13                   companies, even unlimited liability companies,  
14                   if an unlimited liability company is owned by a  
15                   limited liability company you get the -- you  
16                   still get the limited liability but without --  
17                   but in that sort of structure. So anything --  
18                   and there are lots of different types of  
19                   companies. Limited partnerships and so on. In  
20                   the US you have LLCs, which are essentially a  
21                   type of partnership as well.

22                                 So those things which have a distinct legal  
23                   entity, absolutely. It gets a little bit more  
24                   difficult when you're talking about things that  
25                   are arrangements like trusts and partnerships,

1                   particularly in a common law country where those  
2                   things can be created ad hoc, sometimes without  
3                   even any documentation by them. That doesn't  
4                   mean you can't deal with them, that we can't do  
5                   that, but it's somewhat of a different problem  
6                   than the -- than those that are distinct legal  
7                   entities and particularly those distinction  
8                   legal entities that are registered in the  
9                   company register.

10                   So I think we should be looking at those  
11                   separately. Certainly trusts have been used and  
12                   will increasingly be used for illicit purposes.  
13                   Charities have been too and foundations and so  
14                   on. But I think there's more -- probably a  
15                   little bit more work. My gut feel is that we'll  
16                   end up in a place where trusts are becoming less  
17                   and less common law entities and more, you know,  
18                   distinct entities as they start to be -- as we  
19                   start to realize that they are -- that there's  
20                   problems around their use and so on. But yeah,  
21                   I think I'll end there for the moment. Thank  
22                   you.

23                   Q     That's helpful. Mr. Cohen, if I might have to  
24                   you share your views on this question in the  
25                   BC context in particular. Should this be a

1 registry that goes beyond companies and would  
2 also apply to trusts or partnerships or both  
3 and/or should that happen at some future point  
4 down the road, if not --

5 A (JC) Yeah. I would agree with Mr. Taggart's  
6 perspective on this that at the moment private  
7 and public companies should absolutely be  
8 available publicly on a corporate registry and  
9 LOTA, but the partnerships and trusts have their  
10 own complications that I think still have yet to  
11 be fully explored. So my recommendation there  
12 is to initiate that exploration of what are the  
13 complexities around trusts and look at things  
14 around categorizations of the different trusts  
15 and the very specific issues that are involved  
16 with different kinds of trusts and, as opposed  
17 to talk about trusts as one lump group, start to  
18 parse them out as the more -- or as the easier  
19 targets or the easier versions of trusts that  
20 can be folded into such a registry.

21 Q Ms. Johnson or Mr. Dent, anything to add on that  
22 topic? All right.

23 I'm going to move to the question of the  
24 degree of public access to a database. And  
25 we've heard already descriptions of different

1                   ways that this information can be, if it is  
2                   collected up in one place, made available on an  
3                   very limited basis or, at one extreme, quite a  
4                   limited basis, really only on request, let's  
5                   say, of law enforcement or government  
6                   authorities. At the other end of the spectrum  
7                   really a very broad, unhindered public access to  
8                   the information.

9                   Why don't I start with Ms. Johnson. Do you  
10                  have views about this question of who should  
11                  have access to data about the public -- the  
12                  beneficial ownership transparency registry sort  
13                  of database?

14                A     (MJ) So I'm aware that there may be some privacy  
15                  issues that will arise with a public registry.  
16                  And, I mean, we can get into that now or a bit  
17                  later as you wish. But as a general rule I  
18                  think there's a lot of excellent policy reasons  
19                  for making the beneficial ownership information  
20                  public. I know Chris Taggart was talking a  
21                  little bit about the UK experience. When you  
22                  look at all of the rationales for actually  
23                  making corporations more transparent, you see  
24                  that a lot of them really relate to, you know, a  
25                  whole variety of actors in our system. We

1                   talked about, you know, the banks and the trust  
2                   companies and people who have statutory due  
3                   diligence obligations.

4                   There are also people who have -- may well  
5                   conduct due diligence as part of their  
6                   professional obligations even if they're not  
7                   required by statute, for example, lawyers. This  
8                   is something, you know, that should be  
9                   encouraged and to the highest degree, for  
10                  example, that clients are not actually on  
11                  sanctions lists and there's understanding of,  
12                  you know, who the true owner is of people  
13                  conducting complex financial transactions or  
14                  purchasing property, for example.

15                  So there's a whole range of reasons why a  
16                  whole variety of government agencies, including  
17                  tax authorities, law enforcement, we talked  
18                  about public procurement and others would also  
19                  have an interest in easy access to beneficial  
20                  ownership information. So I think the arguments  
21                  are very strong for a public registry, in a  
22                  nutshell.

23                  Q     Any different views from any panel members?

24                  A     (PD) So, Mr. Martland, the -- so if we look at  
25                  the Land Owner Transparency Registry right now,

1                   there are two levels of access or ostensibly one  
2                   that -- I think it's available as of today.  
3                   There are two levels of access available. And  
4                   the first is what they refer to as primary  
5                   identification information and that's what they  
6                   describe as available to any person. And "any  
7                   person" is defined as sort of a member of the  
8                   general public, such as yourself or myself, a  
9                   company conducting due diligence along the --  
10                  you know, along the lines of what Ms. Johnson  
11                  just referred to. But it also -- you know, it  
12                  refers to reporting entities such as financial  
13                  institutions, accountants, you know, real estate  
14                  dealers. Basically anybody that's a reporting  
15                  entity under the AML legislation in Canada.  
16                  That's "any person."

17                  But the requirements of "any person" under  
18                  this legislation are dramatically different or  
19                  divergent in terms of how they would access that  
20                  information, what information ostensibly they  
21                  would need access to. So for a reporting entity  
22                  one could argue that they need more access than  
23                  just a member the general public that is trying  
24                  to learn more about who they're doing business  
25                  with. They have a specific obligation under the

1 money laundering legislation in Canada.

2 And then of course there's -- but that is  
3 one level, any person.

4 The second level is, you know, unfortunately  
5 named a transparency report, but not to be  
6 confused with the transparency report that  
7 houses the beneficial ownership at the corporate  
8 records office of a private company. The  
9 transparency report is available to regulators,  
10 law enforcement, other government agencies, so  
11 they would have much broader access. Much more  
12 personal information or personal identifiable  
13 information would be available to them as well.  
14 That could include their date of birth --  
15 include their full date of birth, include their  
16 CRA number. So much more private or personal  
17 information is available to them.

18 And so right now under the Land Owner  
19 Transparency Registry we have two thresholds.  
20 So it depends if you -- there could be a case  
21 for there to be three thresholds. One for law  
22 enforcement, for regulators, for other  
23 government departments; another level for  
24 financial institutions or other reporting  
25 entities that have specific obligations under

1                   the money laundering legislation so they can  
2                   fulfill their obligations; and then a third  
3                   level for members of the general public or  
4                   people conducting due diligence or whatever  
5                   their need for this information is.

6                   Now, taking into account what Ms. Johnson  
7                   just talked about how lawyers require access,  
8                   well, they're not a reporting entity under the  
9                   AML legislation. They are covered under their  
10                  own professional obligations to conduct money  
11                  laundering due diligence or due diligence with  
12                  respect to identification of high-risk  
13                  transactions under money laundering risk. So  
14                  therefore, you know, you could lump them in  
15                  under -- with other reporting entities as well.

16                  (CT) I'll just add one brief thing, if it's  
17                  okay. I think there's two aspects. One is what  
18                  we consider to be -- sometimes it's called  
19                  legitimate interest, and the question is who has  
20                  a legitimate interest. And I think that we all  
21                  have a legitimate interest. You know, we  
22                  have -- you know, if you are investigating that  
23                  company; if you are thinking of working for that  
24                  company; if you are thinking of buying from that  
25                  company; if that company operates a plant down

1                   the street from you; if you're competing with  
2                   that company. I think all of us have a -- you  
3                   know, this company was set up to be an  
4                   artificial legal person to act on behalf of  
5                   others and I think we all have a legitimate  
6                   interest in that and that's ultimately why the  
7                   EU went for public.

8                   The other aspect is that when you're talking  
9                   about external actors and, you know, the -- many  
10                  of the -- when we're talking about the  
11                  snow-washing and the money laundering in -- of  
12                  overseas property or other aspects using casinos  
13                  and so on, we're talking about offences where  
14                  the predicate offences were overseas. And if  
15                  you're in a country where actually it's the  
16                  heads of the government or the senior ministers  
17                  and so on or -- that are committing those crimes  
18                  and you're a civil society actor doing that,  
19                  then, you know, who is going to be investigating  
20                  that? And is that really what BC wants, to be  
21                  an enabler for maybe making it more difficult  
22                  for Canadian crime but easier for overseas  
23                  crime, enabling corrupt regimes to exploit and  
24                  to -- you know, the resources of the country at  
25                  the expense of the population?

1                   So I think that there's some -- really that  
2                   this has to be public. And then we may come on  
3                   to this, but there's also the quality --  
4                   improved quality aspects around public as well,  
5                   public access.

6           Q       We certainly will get to that. And I wonder if  
7                   I could -- go ahead, Mr. Cohen. Yes.

8           A       (JC) I know you want to move through everything.

9           Q       No, no, no, I -- well, look, these aren't -- to  
10                   the extent that I'm trying to put them into two  
11                   minute blocks and it doesn't admit of that, I  
12                   think we need to cover the points. You go  
13                   ahead.

14          A       (JC) Sure. On access, I agree with a lot of the  
15                   points made so far. From Transparency  
16                   International Canada's perspective, our  
17                   recommendation is a two-tier system that very  
18                   minimal amount of information would only be  
19                   accessible to law enforcement and relevant  
20                   government bodies and everything else is open to  
21                   all public. And by open -- and I think this  
22                   is -- this was one of the challenges with AMLD5  
23                   in Europe where they didn't define "public" very  
24                   well -- is that no paywall. It should be free  
25                   to access. And no -- of the steps that

1                   Mr. Taggart had to go through with the  
2                   BC corporation of registering one way as a  
3                   Canadian citizen, registering another way as a  
4                   foreigner, just open to the world.

5                   And a few points I'd like to make on this,  
6                   very much to Mr. Taggart's point. If Canada is  
7                   open to public money or money from the world  
8                   coming into Canada, we should also be open to  
9                   global scrutiny as well for the very reasons  
10                  Mr. Taggart pointed out. There are people  
11                  within the countries where the predicate offence  
12                  occurs that can better identify the information  
13                  within our registry than our own law enforcement  
14                  or our own civil society could identify. And if  
15                  there's a whistleblower mechanism within the  
16                  registry, which I highly recommend there to be  
17                  one, there's the ability to tip off our law  
18                  enforcement to what they see as maybe the  
19                  commissioner of police, who only makes a  
20                  thousand dollars a year, owning a mansion in  
21                  Vancouver.

22                  And if we look at, say, the -- when the  
23                  Panama Papers came out and the International  
24                  Consortium of Journalists, a lot of the  
25                  information initially went to large, high

1                   profile newspapers around the world with excess  
2                   amounts of resources -- maybe not in today's  
3                   newspapers, but still it was on the ground  
4                   actors from where that predicate offence  
5                   occurred who were better able to make the  
6                   identification.

7                   So there's that sense. If somebody's money  
8                   is going to leave their country and was stolen,  
9                   they have the right to follow that money. And  
10                  if we're being open to international funds, we  
11                  have an obligation to be open to international  
12                  eyes. And to that extent Canada needs to see --  
13                  and exactly as Mr. Taggart said, does BC want to  
14                  be known as a place that just allows itself for  
15                  the money to be dumped? And I'd put to more  
16                  broadly to Canada where we have to look at  
17                  ourselves in a global systems perspective on  
18                  this. We can't be fighting anti-corruption or  
19                  some of our worst issues globally of endemic  
20                  inequality or environmental degradation or  
21                  conflict if we don't see ourselves in this  
22                  global systems perspective of illicit financial  
23                  flows.

24                  And if we have some of these targets in our  
25                  foreign policy of wanting to bring greater

1 stability to the world or wanting to bring  
2 greater equality to the world or wanting to end  
3 environmental degradation, it's not just a  
4 matter of giving foreign aid money. We have to  
5 see ourselves within this international network  
6 and therefore we have to be open to this global  
7 scrutiny that occurs as well. And that's why  
8 all actors need to be available. And it would  
9 be great to think that law enforcement on their  
10 own can look at this information and get the job  
11 done, but I believe there was a headline last  
12 week that said that -- revealed that the  
13 promised funds for upgraded anti-money  
14 laundering enforcement in Canada, or at least in  
15 BC, hasn't even been delivered yet since last  
16 year.

17 So there's the idea that we're going to have  
18 enough law enforcement to address all money  
19 laundering. We need more eyes to, A, as  
20 Mr. Taggart pointed out, give scrutiny to a  
21 registry just as was done with the persons of  
22 significant control registry, and also to help  
23 follow the money.

24 Q Some of this is the concept of the public -- and  
25 including journalists and in particular

1                   investigators, but the public serving as  
2                   verifiers of information and is the best place  
3                   to actually ferret out revealing information of  
4                   criminal activity.

5           A       (JC) Agreed.

6           Q       On the question of the cost for this sort of a  
7                   database, there seems to be certainly a number  
8                   of comments in support of there being free,  
9                   unhindered access without needing a hundred  
10                  dollar deposit onto a credit card and waiting a  
11                  few days to create an account. Most people's  
12                  online behaviour, I think, is such that that  
13                  small amount of friction of making an initial  
14                  outlay of cash and creating an account and  
15                  waiting a few days may simply leave them  
16                  forgetting to go back to the website or not  
17                  pursuing the inquiry.

18                         But are there other views on this question?  
19                         Because at one level that might seem like the  
20                         sort of undertaking to create this sort of a  
21                         registry and then make it available to the world  
22                         that may entail some cost. Should there be a  
23                         cost imposed, and if so, on who? Should it be  
24                         people visiting the site in order to search for  
25                         that information as opposed to, let's say,

1 through the cost of incorporation for companies  
2 or other mechanisms?

3 A (CT) I'll start if it's okay. Go ahead, Peter.

4 (PD) Sorry, Chris. But just as an initial  
5 comment would be there are beneficiaries to  
6 having an open, accessible, verifiable registry  
7 of beneficial ownership, and large institutions  
8 such as financial institutions would or could  
9 have a significant interest and benefit from  
10 having access. And that access -- in terms of  
11 the cost of setting up a registry, that access  
12 could be offset and it would be offsetting their  
13 already -- you know, their already costs  
14 associated with compliance right now. So you  
15 could impose -- and it has been discussed  
16 globally as well, but you could impose costs to  
17 large institutional clients of registries like  
18 this that are given broader access. You know,  
19 basically an API downloadable access to the  
20 information where they're not just making  
21 individual queries but they're making large  
22 data-gathering query exercises in order to match  
23 that data against their own institutional data  
24 to look for issues around compliance and -- with  
25 money laundering legislation, but they're

1                   conducting their own due diligence with respect  
2                   to their customers.

3                   So there is an opportunity to offset these  
4                   costs or these development costs with  
5                   recognizing and understanding that there are  
6                   beneficiaries to having this information  
7                   available. And the larger the organization, the  
8                   more benefits that they're gathering from that,  
9                   you could have a sliding scale of costs  
10                  associated with that.

11                  (CT) So just to your question, I guess the  
12                  question is who benefits from a company  
13                  existing. I mean, a company just doesn't exist,  
14                  you know, and we all have to pay for it. It's  
15                  not like a street lamp or something where nobody  
16                  really gets -- you know, no individual entity  
17                  gets a benefit. This is something that somebody  
18                  gets a benefit from the creation of a company.  
19                  And there are externalities to do with this, as  
20                  we've seen. You know, companies can be used  
21                  for -- be used for all sorts of problematic  
22                  purposes. And so it's right that those  
23                  externalities, those costs of, you know,  
24                  creating that company are borne by the people  
25                  who benefit, the people who create the company.

1                   If you are then -- once you then go down that  
2                   route of charging for access to information  
3                   about it, the question is why do you have a  
4                   register in the first place? I mean, why does  
5                   the BC register exist?

6                   So I go back to the point about -- the quote  
7                   from Robert Lowe in terms of it exists so that  
8                   the -- we can -- so that people can have access  
9                   and see who they're doing business with. And  
10                  when you start to -- you know, if you -- it just  
11                  doesn't make any sort of sense to charge for  
12                  that the information because what we're going to  
13                  -- what you're saying is is that we will make it  
14                  more difficult for people to access that  
15                  information. We want to collect it, but we  
16                  actually don't want people to use it, so it's  
17                  nonsensical in terms of charging for that. And  
18                  whether you charge \$5 or \$50 or even a dollar,  
19                  each bit of that is adds friction. It adds  
20                  friction for the people using it, it means that  
21                  there needs to be a charging regime around that  
22                  and it adds all sorts of difficulties around it.  
23                  It means that can people -- are you saying that  
24                  actually some big companies will have access to  
25                  the underlying data and they can do all sorts of

1 things but actually, you know, more innovative  
2 companies can't so, you're essentially making a  
3 cost of -- you know, a capital cost essentially  
4 for doing this.

5 If you genuinely think that when -- by  
6 creating -- by having this power to create -- or  
7 talks about creates legal personalities, create  
8 legal entities and that there needs to be a  
9 record of this. Then, I mean, one of the things  
10 that Tim Moss, who is the head of the company  
11 registrar -- the Registrar General of the UK, he  
12 said basically our job is to run a register, and  
13 our core metric should be the number of people  
14 that use that register. And since they've moved  
15 towards open data and making all of this  
16 available for free and actually has underlying  
17 data, the increase of the use of that register  
18 has increased well over 100 times.

19 Now, people don't search company registers  
20 for fun, generally. They search it because  
21 they're in business; they need to know about it;  
22 they search it because they're trying to work  
23 out whether they want to work for this company;  
24 they search it for doing law enforcement. If  
25 you're just -- one is that increase in use is a

1                   powerful driver to better business and for  
2                   innovation and for trust. And if you reduce  
3                   that, yes, you might be able to charge a few  
4                   million dollars out of it, maybe that, but at  
5                   the expense of what? You know, you could maybe  
6                   charge it so that every time you walked under a  
7                   street light you had to pay \$1 otherwise the  
8                   light went dark on you. I mean, we can do these  
9                   things, but fundamentally let's look at the  
10                  wider, bigger picture.

11                                 And only other thing I would say about both  
12                   access -- public access, about costs, about  
13                   making it available as open data, we already  
14                   have an example of what happens when you do this  
15                   in the UK, and do you know what? People didn't  
16                   stop registering. People didn't stop declaring  
17                   their information. People didn't stop doing  
18                   business in the UK. In fact quite the opposite.  
19                   And the sky didn't fall down and actually we  
20                   have more understanding, we have better  
21                   visibility and we have more trust now.

22                  Q         Well, that's an important point because one of  
23                   the arguments that is sometimes put forward  
24                   against this sort of an initiative is that it  
25                   might deter people from incorporating in that

1 jurisdiction, that they'll simply venue shop  
2 elsewhere. You simply say --

3 A (CT) Obviously some of the bad guys will do  
4 that; right? And that's a good thing. That's  
5 not -- that's a feature, not a bug, as we say in  
6 the tech world, you know. It's -- we want the  
7 bad guys to go elsewhere. Not that they won't  
8 exist. Criminals will always exist and the  
9 incentives are such that people will use this.  
10 But we should be making life difficult for  
11 criminal activity, as I think you've heard from  
12 other witnesses. It's a sort of a business in a  
13 way. They consider themselves a business. They  
14 don't think -- you know, they -- you know, it's  
15 a cost-benefit thing, you know. And it's, what  
16 are the benefits I can get from this criminal  
17 enterprise and what are the costs? How likely  
18 am I to be caught? If I get caught, what will  
19 be the downsides?

20 And what you're doing is you're changing the  
21 cost-benefit balance here. And it should be,  
22 you know, it should be more likely -- you know,  
23 criminals should be driven from BC and go and --  
24 you know, and go and incorporate in Panama or in  
25 some other jurisdiction. That's a good thing.

1           Q     Let me ask you -- go ahead, Mr. Cohen.  Yeah.

2           A     (JC) I just wanted to chime in with a couple of  
3                 points to the cost.  One -- first, I absolutely  
4                 agree about Mr. Taggart on we don't want storage  
5                 of illicit finances to be a function of our  
6                 economy.  We don't want empty condos blocking  
7                 out new homeowners and just being the safety  
8                 deposit box of criminals in the sky to be part  
9                 of what we do.  So I would definitely agree with  
10                him on that that if it dissuades certain people  
11                from incorporating, that's great.

12                         And on the basis of a deterrent, a fully  
13                         publicly accessible registry will wind up  
14                         helping that -- will wind up helping part of  
15                         that function of a registry as a deterrent.  So  
16                         as, an example, Scottish limited's partnerships  
17                         were not initially part of the UK registry and  
18                         were being observed and commented on as major  
19                         vehicles for criminal activity.  And when they  
20                         were finally brought into the UK registry, there  
21                         was a drop of roughly 80 percent incorporation  
22                         of those.  So obviously there was -- they were  
23                         being overused but by the wrong actors.

24                                 So if criminals know that there is a  
25                                 deterrent, if they don't see those same metrics

1                   that Mr. Taggart was talking about about usage,  
2                   they'll still see Canada and BC as a potential  
3                   safe zone if people aren't using it.

4                   Two, when we look at costs, let's also think  
5                   about costs recovered on the other side of this  
6                   and the money that we can recoup from tax  
7                   evasion that has been used by shell companies as  
8                   well. So it's not just a matter of how much is  
9                   the public spending on this and not getting back  
10                  in costs incurred so much as what are we getting  
11                  back in tax revenue received; what are we  
12                  getting back in cutting down in CRA, in police,  
13                  in FINTRAC investigation times for them to be  
14                  able to do their business; what are we getting  
15                  back in terms of businesses cutting down on the  
16                  due diligence work that they have to do and  
17                  businesses being able to conduct their business  
18                  better?

19                  Which ultimately, you know, the industry  
20                  ministries across Canada that look at a registry  
21                  like this purely from the perspective of how  
22                  easy is it for a company to incorporate, should  
23                  also be looking at it how much does our registry  
24                  cut down the burden of needed due diligence  
25                  requirements. So I think a lot of the

1 ministries in Canada need to turn that  
2 perspective around.

3 And then finally we also already have  
4 precedents in Canada for a completely free  
5 registry to access, which is the Extractive  
6 Sector Transparency Measures Act, which requires  
7 extractive companies to report on payments made  
8 to governments and is an initiative that Canada  
9 has exported as an idea around the world. That  
10 does not -- that does not cost to access. It is  
11 viewed as a public utility to access information  
12 for citizens to know more about the business  
13 that's being done especially with governments,  
14 which is incredibly important. So I think we  
15 need to see it that way from the public utility  
16 perspective.

17 Q Let me move into asking about -- we've touched  
18 on this, but I think it might be helpful to put  
19 a bit finer point on it. What particular data  
20 or information are we talking about, again in  
21 normative terms, should we have included in a  
22 BOT public register? To ask that question I'm  
23 going contrast two documents.

24 MR. MARTLAND: Madam Registrar, if we could look,  
25 please, at tab 6, which is exhibit 284 now. And

1 page -- numbered page 13, which might be about  
2 15 or 16, if you will, of the -- there's a  
3 table 1. Okay. There we go. It's at the top  
4 of that page. Thank you.

5 So have a look, please, at the table 1 here.  
6 And you'll see this is, Mr. Cohen, from the End  
7 Snow-Washing Coalition, one of the reports that  
8 we referred to earlier. Do you recognize that?

9 A (JC) I do.

10 Q Good. And so we see first:

11 "A unique identifier number that shows  
12 ties to other business entities over which  
13 the individual has significant control  
14 (generated by the database itself)."

15 What's suggested there is that that should be  
16 public. The full legal name, public. All other  
17 names the person is commonly known by, public.  
18 Date of birth, partial, meaning that the public  
19 portion would be month and year; the particular  
20 day of the month would be under the private side  
21 of the ledger. Under the "public" heading,  
22 usual residential address and service address.  
23 Of course they may not be the same. Under the  
24 "private" side, next we see the country of  
25 principal tax residency. Next, public, country

1 of usual residence, private citizenship. But  
2 the remaining items there are public: the  
3 nature and extent of beneficial interest held,  
4 the day on which the individual became or ceased  
5 to become or be a beneficial owner. And also  
6 public whether someone is a PEP, politically  
7 exposed person status and/or the head of an  
8 international organization standard.

9 Are there views from the panel -- this is  
10 one view of the world that would put certain  
11 items on one side or the other of the public  
12 versus private. Do panel members have comments  
13 on their agreement or disagreement with that  
14 approach?

15 A (CT) I would broadly agree with it. I -- from a  
16 practical point of view and from again looking  
17 at the UK example, the citizenship, the  
18 nationality, not necessarily the same thing, but  
19 the citizenship and nationality in the UK is  
20 public and we've not seen any significant  
21 problems as a result of that. So -- or any  
22 problems I'm aware of in fact as a result of  
23 that. So -- and as a matter of fact  
24 directors -- company directors, their  
25 nationality is also public in the UK.

1                   So I'm not -- you know, I'm not convinced  
2                   that there's a problem in making that public.  
3                   And I can see many, many uses, particularly when  
4                   you have common names and so on and -- for  
5                   disambiguating this -- through this sort of  
6                   stuff. And for investigations by law  
7                   enforcement, by civil society, by journalists  
8                   and so on overseas. So I can see significant  
9                   benefits for that.

10                   And I think there's -- it's always a  
11                   challenge when you've got a politically exposed  
12                   person as part of a beneficial ownership field  
13                   in term of whether they are or not is something  
14                   that changes independently of company -- of  
15                   their ownership of the company. And so it's one  
16                   that is just a little bit tricky to -- you know,  
17                   there's some tricky aspects of that, but I  
18                   broadly agree with this.

19                   Q     Ms. Johnson?

20                   A     (MJ) Sorry, did you --

21                   Q     I just wanted to see if anyone had any other  
22                   comments, Ms. Johnson or Mr. Cohen.

23                   A     (MJ) yeah.

24                   Q     And it's fine if you don't. It's not --

25                   A     (MJ) Yeah. So just generally, obviously if the

1 legislature passes legislation to create a  
2 public beneficial ownership registry with its  
3 own privacy law analysis as to what kind of  
4 information is -- it feels comfortable making  
5 publicly available, so I think -- I mean, in  
6 Canadian jurisprudence, section 7, section 8  
7 does protect privacy rights of Canadians. And  
8 essentially there would probably be -- any  
9 disclosure -- public disclosure would have to  
10 meet section 8 and section 7 and be justifiable  
11 under section 1, which is the limitations  
12 clause.

13 So it really -- I would just sort of suggest  
14 -- and in Canada there is some history around  
15 citizenship and preventing discrimination on the  
16 basis of national origin. So there might be  
17 areas where the legislature decides that in  
18 accordance with Canadian law some personal  
19 information might not be justifiable under  
20 section 1 to be disclosed, possibly a  
21 residential address but possibly not. But one  
22 thing I would say is I think from my perspective  
23 it would be really important to not throw the  
24 baby out with the bath water and use this as a  
25 reason to not have a beneficial -- a public

1                   beneficial ownership registry.

2                   Obviously when you put up a list like this,  
3                   it's clear that legislatures can make choices  
4                   about what information becomes publicly  
5                   disclosable. And that's still -- you know, that  
6                   would still -- nonetheless there would still be  
7                   huge benefits to making the remaining  
8                   information publicly available for all the  
9                   reasons that Peter and James and Chris have  
10                  enumerated already.

11                Q    Ms. Johnson, this discussion may move us into a  
12                  consideration of this topic of privacy. Your  
13                  submission to the Cullen Commission, which is  
14                  now exhibit 283, addresses that. Equally  
15                  there's a document -- Madam Registrar, I'm now  
16                  out of sequence -- but number 9 -- tab 9 on the  
17                  list is a report that you authored in, I think  
18                  October 2019 from the End Snow-Washing  
19                  Coalition. But your document -- or you're the  
20                  primary author, "A Public Beneficial Ownership  
21                  Registry and the Canadian Privacy Regime: A  
22                  Legal Analysis."

23                A    (MJ) Yes.

24                MR. MARTLAND: Could I ask, please, Mr. Commissioner,  
25                  that this document become the next exhibit.

1 THE COMMISSIONER: Very well.

2 THE REGISTRAR: The next one is 290,

3 Mr. Commissioner.

4 **EXHIBIT 290: Mora Johnson, A Public Beneficial**  
5 **Ownership Registry and the Canadian Privacy**  
6 **Regime: A Legal Analysis, October 2019**

7 MR. MARTLAND: Thank you.

8 Q And I won't have time enough to work our way  
9 through, but this is -- you gave us a very  
10 compressed synopsis of the Charter guarantees  
11 that are at issue and the need for there to be  
12 an appropriate balancing that anticipates  
13 concerns under the Canadian constitutional  
14 framework about particular types of information  
15 that might be problematic if simply published  
16 for the world to see.

17 A (MJ) If I could add one other point, which is I  
18 think that in the UK, for example, there's a  
19 public publishing exemption by application.  
20 This is another sort of policy consideration  
21 that the legislature could look at. There might  
22 be persons who have legitimate reasons to not  
23 want their information published and  
24 BC officials could determine the parameters for  
25 applying such an exemption as well and that

1                   would certainly go some way to adjusting any  
2                   individual privacy issues that might arise.

3                   Q     This won't do it justice, but one part of the  
4                   analysis in the paper that's displaying on the  
5                   screen that you wrote engages in a  
6                   consideration, as happens so often in  
7                   constitutional analysis, what are the objectives  
8                   of this law as opposed to what are the potential  
9                   charter infringements and can they be minimized  
10                  to the extent that there are negative  
11                  implications for people's constitutional rights.  
12                  And you identify a number of objectives that  
13                  would seem to be very much serving the public  
14                  interest, collective interest, in dealing with  
15                  these things.

16                  I should also add this. You come down at  
17                  the end of day in favour of there being  
18                  legislation so that it's very clearly spelled  
19                  out -- if there is to be information gathered,  
20                  processed, made available to the public, that  
21                  that's done quite directly through legislation  
22                  so that it's spelled out in plain terms with the  
23                  authority of legislation. Is that fair to say?

24                  A     (MJ) Yes. I mean, the Privacy Act makes it  
25                  pretty clear -- makes it difficult for the

1 government to just willy-nilly publish the  
2 information that it gathers. So clear  
3 legislation setting out a public registry would  
4 be desirable.

5 MR. MARTLAND: Madam Registrar, we can take that  
6 document down now. Thank you.

7 Q Since we've moved into the area of privacy I  
8 wonder if I might turn to the sorts of  
9 protections or measures that might be used to  
10 anticipate circumstances where there might be a  
11 good reason to depart from simply publishing the  
12 information on a public database, for example,  
13 minors or in circumstances where a person has a  
14 well-founded basis to fear for their own  
15 personal safety or to fear that there could be  
16 some harm arising.

17 Are there particular mechanisms or  
18 approaches that any of the panel members would  
19 care to comment on for addressing those sorts of  
20 issues that could arise if there were a database  
21 that simply took the names and the identifying  
22 information along the lines we just referred to  
23 and displayed it for the world on the internet?

24 A (MJ) May I just really briefly -- I think just  
25 to be clear that the government would still

1 collect this information from all beneficial  
2 owners of all corporations, as we've just been  
3 discussing here today. But the issue would  
4 really be an application made by particular  
5 beneficial owners to avoid the public  
6 publication of their personal information. And  
7 just as a couple of, you know, thoughts about  
8 it -- I think Chris Taggart probably has some  
9 good experience with the UK example he might  
10 want to illuminate -- but there might be  
11 business reasons as well that could be  
12 considered.

13 There might be personal reasons. For  
14 example, the beneficial owners would -- the  
15 nature of the business that they're in, for  
16 example, concerns about harassment. And that  
17 they could apply, provide evidence of why they  
18 should be exempted and that this could be done  
19 on a case-by-case basis. The decision could be  
20 made on a case-by-case basis.

21 Q Mr. Taggart?

22 A (CT) I would start again from the UK case. And  
23 it may be, as Mora says, you know, that --  
24 because of the Canadian constitution, something  
25 like citizenship or nationality might be taken

1                   from a different -- you know, you might take a  
2                   different perspective, and that's absolutely  
3                   right that you should be able to do that.

4                   But I would start from the UK case, let's  
5                   use the UK example, and what that basically says  
6                   is that this is -- you know, that takes the view  
7                   that being a beneficial owner, being --  
8                   benefitting and running and controlling a  
9                   company is a public act and that there's a  
10                  public record of it. And that's the -- you  
11                  know, there's a decision to do that, that you  
12                  have made that decision, you know, essentially  
13                  with your eyes open to do that. And that if you  
14                  don't wish to do that and, you know, people had  
15                  enough warning -- you know, had plenty of  
16                  warning in the UK and they could have closed  
17                  their UK companies or, you know -- and, for  
18                  example, traded as sole traders, you know, and  
19                  been personally liable.

20                  But you get those -- that is the trade-off  
21                  that you make as a director or founder or the  
22                  shareholder of a company is that you say okay,  
23                  well, I get benefits, I get protection under  
24                  law, I get this proxy to act on my behalf and I  
25                  get all these benefits from it, and that's the

1 trade-off you make.

2 The requirements were very, very limited and  
3 very specific, and it's more or less along the  
4 lines that there's something to do with the  
5 nature of that company that would cause it be --  
6 cause you to be on the risk. And, let's say,  
7 animal testing. Now, whatever your views about  
8 animal testing, nevertheless animal testing is a  
9 legitimate activity and that if you are a  
10 director of an animal testing company, then you  
11 may be at risk as -- because of the nature of  
12 that company.

13 Now, if you happen to be, you know, an  
14 oligarch and you're a beneficial owner, then of  
15 course, you know, what is part of the nature of  
16 being an oligarch, part of the nature that  
17 people in such regimes are -- want to launder  
18 their money and want to buy property in  
19 Vancouver or London or somewhere like this is  
20 because of the rule of law because of the safety  
21 of that, of having those assets in those sorts  
22 of places. But simply being an oligarch itself,  
23 you know, you've chosen to be an oligarch; it's  
24 a risky business being an oligarch; that doesn't  
25 give you the right to not be on the register.

1                   And so I think I would start from that  
2                   starting point from the UK and say what is it  
3                   that we think is specific about our case or we  
4                   think that the UK has got wrong that we would  
5                   like to change.

6                   And just on the issue of minors or people  
7                   without the capacity to make a decision, I  
8                   struggle with how they can be, you know,  
9                   beneficial -- they can control a company if they  
10                  don't have the capacity to make a decision. You  
11                  know, and if you're saying -- as we've seen, you  
12                  know, in the UK there was some ones where babies  
13                  of less than a year old were being put down as  
14                  beneficial owners, and I'm really wondering  
15                  who's controlling that company if you've got,  
16                  you know, a toddler doing it.

17                  So I think we have to look at specific  
18                  examples. The limitations should be really  
19                  quite narrow. And in the UK, again, we've not  
20                  seen any issues -- we've not seen any issues as  
21                  a result of this. And I think, you know, under  
22                  50 people have been given those exemptions and  
23                  that's in -- on a database of about 4 million or  
24                  so, so we're really talking about very limited  
25                  cases. They do exist, absolutely, but they're

1                   very limited, and I would say start from that  
2                   position of the UK, deviate where you think it's  
3                   required because there's some particular aspects  
4                   of Canadian law or situation or where you think  
5                   they've got it wrong.

6                   Q    I'm going to move to one item I almost neglected  
7                   to do.  But, Mr. Cohen, I'll ask our registrar  
8                   to please display tab 7 and then following that  
9                   tab 8.  And this is just to cover off because  
10                  these are documents I don't propose to review at  
11                  length but I would like to just confirm what  
12                  they are.

13                                These are two different technical briefing  
14                                reports prepared by the End Snow-Washing  
15                                Coalition.  Do you recognize that, tab 7,  
16                                dealing with the information fields on  
17                                beneficial ownership registries in international  
18                                jurisdictions?

19                   A    (CT) I do.

20                   MR. MARTLAND:  I'll ask please, Mr. Commissioner, this  
21                   become the next exhibit.

22                   THE COMMISSIONER:  291.

23                   THE REGISTRAR:  291.

24                                **EXHIBIT 291:  Transparency International Canada,**  
25                                **Technical Briefing Note - Comparison of**

1                   **Information Fields Amongst Beneficial Registries**  
2                   **in International Jurisdictions (2020)**

3                   MR. MARTLAND: Thank you. Next tab 8.

4                   Q     Likewise, Mr. Cohen, a technical briefing paper  
5                   dealing with the necessary components and  
6                   considerations for a publicly accessible,  
7                   Pan-Canadian company registry?

8                   A     (JC) Yeah, I recognize that.

9                   MR. MARTLAND: I'll ask that be exhibit 292, please,  
10                  Mr. Commissioner.

11                 THE COMMISSIONER: Thank you.

12                 THE REGISTRAR: Exhibit 292.

13                   **EXHIBIT 292: Transparency International Canada,**  
14                   **Technical Briefing Note - Necessary Components**  
15                   **and Considerations for a Publicly Accessible,**  
16                   **Pan-Canadian Company Registry of Beneficial**  
17                   **Owners (2020)**

18                 MR. MARTLAND:

19                 Q     Let me turn to data quality and the distinct  
20                   concepts of validation as opposed to  
21                   verification of the information that is provided  
22                   and then made use of through a BOT register.

23                             Mr. Taggart maybe first you can help us  
24                   understand what I understand to be a distinction  
25                   between validation and verification, and then

1 offer your views on what the gold standard would  
2 be for both validation and verification of data?

3 A (CT) Absolutely.

4 MR. MARTLAND: Before you do I'll just say, Madam  
5 Registrar, we can have that document taken down.  
6 Thank you.

7 THE WITNESS: (CT) So when we're talking about  
8 whether the data is correct, right, you know,  
9 whether it is right, whether it is truthful and  
10 so on, this is a hard problem to do. This is  
11 almost a philosophical problem, you know, akin  
12 to I've only ever seen white swans; does that  
13 mean that a black swan doesn't exist or not?  
14 You know, these are difficult things to do. And  
15 essentially you will never get to perfect, but  
16 you can get to good.

17 Firstly, you know, there's -- we should just  
18 separate out those issues. There are three  
19 issues really. One is authentication or  
20 authorization. So who's making this claim, and  
21 are they authorized to do so? And actually in  
22 BC this OrgBook which I mentioned earlier has  
23 got some really interesting work around the  
24 technology -- the blockchain technologies which  
25 are going to allow this and allow digital

1 identities. We're already using -- all of us  
2 are using digital identities, if we have a  
3 Google account, often using our phones and  
4 backups and so on as authentication devices.

5 We are using these sorts of things, and I  
6 think this is where in five years' time company  
7 registers will be increasingly using this to  
8 identify to make sure that John Smith here is  
9 that John Smith there is the -- you know, for  
10 two reasons. One is to say the two John Smiths  
11 are the same. We'll be using digital identities  
12 around that. But we'll also be making it much  
13 more difficult for people to impersonate  
14 directors and say, I'm a director and I'm -- and  
15 you should change the registered address or  
16 something like that.

17 So one is there's some issues -- additional  
18 issues around authentication and authorization.  
19 But there are two things you pointed out. One  
20 is validation and the other is verification.  
21 Validation mean is it a valid -- does it have a  
22 valid value. So, for example, a beneficial  
23 owner with a date of birth in the future isn't a  
24 beneficial owner. That's not valid.

25 And many examples of that. If you are --

1                   you know, there are also ones where it's a  
2                   little bit hard to tell. That person who's over  
3                   a hundred, are they really over a hundred? Is  
4                   that a mistake, or are they -- is there  
5                   something -- you know, it's possible. Over 200,  
6                   I don't think there's anyone in the world that  
7                   is over 200 today. So there are ones where  
8                   there's validation.

9                   There's ones where it's not just a binary  
10                  thing; it's one where you, you know, allow  
11                  certain values through and others you have to  
12                  have some sort of proof and so on around them.  
13                  So validation is just are there values, and  
14                  those can be even extended to is this a valid  
15                  Canadian address, for example, or is this  
16                  something that's been made up. There are things  
17                  you that you can do. And these days Companies  
18                  House in the UK, they did none before. These  
19                  days they're doing a lot in terms of -- it also  
20                  stops people saying, what's your nationality?  
21                  Oh, I'm British; I'm English; I'm Cornish; I'm,  
22                  you know, Yorkshire. You know, all these sorts  
23                  of things. It means that well, I'm Englishman;  
24                  you know, I'm an English woman. You know, it  
25                  gives you higher quality around this.

1                   Verification is much more difficult,  
2                   particularly verification of beneficial  
3                   ownership because what we mean is is the fact  
4                   that's been stated true. And I would urge  
5                   you -- I think maybe you have some of this  
6                   already in some of the snow-washing stuff, but  
7                   it's worth looking at the underlying concepts  
8                   used in the beneficial ownership data standard  
9                   by open ownership that really talk about what do  
10                  we mean by beneficial ownership. And  
11                  effectively we're saying what happens when you  
12                  collect beneficial ownership, when you record  
13                  beneficial ownership, is a statement is being  
14                  made by the company or the beneficial owner  
15                  themselves. They're saying, this person is the  
16                  beneficial owner, or I am the beneficial owner  
17                  of this company. Or occasionally you're having,  
18                  you know, a assertion made by -- a hypothesis  
19                  made by someone external a bank saying, I'm not  
20                  sure that this person is the beneficial owner,  
21                  or I've got some other information here.

22                  But you've got those two things. And the  
23                  first of those is a really hard thing to do  
24                  because -- and this is another reasons why it's  
25                  so important the data is public -- criminals

1                   lie, and they're pretty comfortable about lying,  
2                   compared with the predicate offence is -- it's  
3                   often a minor thing. And certainly if there  
4                   aren't considerable sanctions, and you can serve  
5                   up to two years in jail for problems with data  
6                   you've submitted for the -- data you've  
7                   submitted to the -- around beneficial ownership.

8                   Criminals will lie and they will tell you --  
9                   they will tell you the wrong facts. And so if  
10                  they say, I am the beneficial owner of this  
11                  company, then it's actually -- you know, how do  
12                  you go about checking this? As a due diligence  
13                  professional you may get -- ask to see a copy of  
14                  the share register or share certificates, but  
15                  most share registers or share certificates are  
16                  actually Word documents or Excel documents.  
17                  Occasionally they're held in a database like  
18                  Lupins [phonetic] or something, but mostly that.  
19                  And if they're going to lie around the fact that  
20                  they're the beneficial owners, they're going to  
21                  lie around the -- they may also fraudulently  
22                  produce documents that are -- that can't be  
23                  verified because they've been produced by the  
24                  company.

25                  And finally, it's a difficult thing to

1                   prove, you know, like, the black swan problem,  
2                   which is it's difficult to prove that this  
3                   person isn't acting on behalf of somebody else.  
4                   You just don't know and don't access -- don't  
5                   have access to the facts that there's some side  
6                   agreement with somebody else. You know, let's  
7                   say they're a lawyer, for example, or that  
8                   there's some side agreement with somebody else  
9                   to act on their behalf. Those sorts of things  
10                  are -- you know, are difficult to find, but  
11                  there are a couple of ways that we can do this.

12                         Firstly, we can realize that it's a problem.  
13                   And actually the UK is doing -- again, is doing  
14                   some quite interesting stuff around that, and  
15                   particularly starting to use -- digital  
16                   identities is a route they'll be going down, I  
17                   think. Secondly, we can -- as Peter pointed  
18                   out, I think, you know, in terms of getting  
19                   professionals in the country as well that can be  
20                   prosecuted, that can be put in prison if they're  
21                   acting on behalf of -- fraudulently acting on  
22                   behalf of people they haven't done a check and  
23                   they haven't been able to attest that this  
24                   person really is the owner to their  
25                   satisfaction, then that can strengthen it as

1 well.

2 But also, finally, is -- particularly if --  
3 you know, it's difficult to lie consistently.  
4 When you -- you know, and this is something that  
5 law enforcement have known lots of times.  
6 They'll tell a story here and they'll tell a  
7 story here and those things contradict, and the  
8 further you make -- the further you put those  
9 two stories away from each other by locking this  
10 behind some paywall and locking that behind a  
11 paywall, the harder it gets to see those  
12 contradictions. If they can say oh, on this  
13 register -- on the BC register, hmm, wait a  
14 minute; I'm owner of this company and this owner  
15 is -- this company is connected with another  
16 one, but actually those two things conflict.  
17 You know, one is a parent of the other and those  
18 sorts of things conflict.

19 There's a thing called Benford's Law which  
20 is about analyzing company numbers -- sorry,  
21 company -- analyzing company financials to  
22 identify which company financials are being made  
23 up. It's about the distribution of numbers in  
24 -- generally in company financials. Again,  
25 we've seen clients of OpenCorporates doing some

1                    amazing AI work finding contradictions in  
2                    networks that just don't make sense and provide  
3                    this sort of stuff.

4                                       So the truth is is that the reason why  
5                    criminals don't want public beneficial ownership  
6                    registers is it's significantly riskier for all  
7                    reasons to lie in public than it is to lie  
8                    privately. That doesn't mean that -- you know,  
9                    that it's not still possible, but it does mean  
10                    that their chances of getting caught, the  
11                    chances of them using, for example, let's say,  
12                    you know -- so there's a concept called many  
13                    eyes and it comes from open source software and  
14                    the idea is that all bugs are shallow, all bugs  
15                    are easy to find given many eyes. And if you  
16                    have people looking at the data in lots of  
17                    different contexts, not just the registrars, not  
18                    just the law enforcement, but lots of different  
19                    contexts, you can identify things that you  
20                    wouldn't know because they are coming from --  
21                    let's say that they are, you know, Arabic, or  
22                    that they are coming from, you know, Estonia or  
23                    wherever, and that they know something about it.  
24                    They know that this place here, that address  
25                    that's the beneficial owner of a multi-million

1                   dollar company, is actually some sort of tiny  
2                   shop in a grubby place or something. You can  
3                   see things like that. You can see that actually  
4                   this name is -- I don't know -- for example, the  
5                   transliteration of Donald Duck in Arabic, for  
6                   example, you know, these sorts of things. It's  
7                   hard to lie in public, but the first thing is  
8                   going to be one of making it open. That's why  
9                   the UK took that approach.

10                   The second thing is that we can collect the  
11                   information accurately and that means keeping it  
12                   up to date because somebody will lie and say,  
13                   oh, I'm not the beneficial owner, and then, you  
14                   know, maybe that's true on that day. Three days  
15                   later they are, and they're not reporting it,  
16                   for example. So there's a lot you can do around  
17                   that.

18                   And we've written -- we co-wrote with open  
19                   ownership a series of blogs about what you can  
20                   do and how to handle that. And I don't want to  
21                   go through -- take up the commission's time with  
22                   this sort of stuff, but there's a lot you can  
23                   do. And it starts with validation, it starts  
24                   with making that information open and then  
25                   starts moving down more -- you know, more

1 interesting, more tricky routes, whether it's  
2 professionals attesting to things, whether it's  
3 digital identities and so on.

4 Q When we think about compliance and enforcement  
5 in terms of where there is inaccurate  
6 information given to the registry, it seems  
7 there are a number of different kinds of tools  
8 that might be looked to to deal with those  
9 circumstances. Compliance orders to correct  
10 information. Administrative penalties that  
11 could be imposed and of course a range of  
12 different kinds of approaches or penalties that  
13 might be used. The possibility of suspending or  
14 even dissolving a company's status.

15 Maybe, Mr. Dent, or any other panelist who'd  
16 like to comment on the range of measures there  
17 for compliance and enforcement and what should  
18 be taken into account in determining the  
19 appropriate kind regime.

20 A (PD) Thank you. I mean, the first obligation of  
21 the registry or of the regulator should be to  
22 look for opportunities to drive compliance. And  
23 what are those opportunities to drive  
24 compliance? They're not always going to be the  
25 most severe sanction. Most -- as we've talked

1                   about, the vast majority of filers will be  
2                   filing -- will not have not have an adverse  
3                   reaction to filing their beneficial ownership  
4                   information or the nominal information about  
5                   their company or their corporate structure. And  
6                   so there will be the land of many mistakes or  
7                   inadvertent mistakes or honest errors that can  
8                   be cleared up through an administrative process.  
9                   Warning letters or information circulars that  
10                  are driving them towards, you know, full and  
11                  complete compliance.

12                               Where there's going to be non-compliance and  
13                               it's purposeful, then there has to be those more  
14                               draconian measures that are taken in place that  
15                               will ensure or enforce compliance from those  
16                               that would seek to obfuscate or hide or be  
17                               secretive with respect to the information that  
18                               they're sharing.

19                               So it should be a wide range, but the onus  
20                               should be -- or the first line of defence should  
21                               be a general compliance framework that obligates  
22                               people to maintain compliance but also makes it  
23                               easier for compliance to take place. That could  
24                               be drop-down boxes where you're unable to  
25                               complete a form and submit it unless all of that

1 information is completed and it's completed  
2 accurately and therefore you're driving towards  
3 compliance; you're not driving towards  
4 sanctions, and that should be the first line of  
5 defence.

6 Q Ms. Johnson, Mr. Cohen, Mr. Taggart, any further  
7 comment on that? I appreciate we could spend  
8 another hour on that topic alone, but any high  
9 points to take us to now?

10 A (JC) I would say that one on the -- or on  
11 validation of information, digital IDs, is  
12 definitely a road to explore. I'm not an expert  
13 on digital IDs, so I'm not going to get too deep  
14 into it other than to agree with Mr. Taggart on  
15 there's a lot of innovations I've heard about on  
16 this path that will hopefully make this system  
17 more reliable.

18 If we also look at the need for unique  
19 identifier numbers on the registry, that's  
20 another system that's going to let us know, you  
21 know, does John Smith -- it's one John Smith who  
22 owns 12 companies in Vancouver or 12 John Smiths  
23 who own 12 companies in Vancouver. So that's  
24 why unique identifiers are also a critically  
25 important part of the registry.

1                   In terms of penalties, I think one guiding  
2                   principle is that it can't be -- a penalty can't  
3                   be seen as the cost of doing business. We're  
4                   already talking about the importance of money  
5                   laundering is moving vast amounts of money for  
6                   criminal enterprise. And if the penalty on,  
7                   say, seizing a \$5 million home in Richmond is  
8                   \$150,000, that's, you know, not that much. So  
9                   we need to look at proportionate administrative  
10                  penalties and even prison time where necessary.

11                  And on top of that we have to look at not  
12                  just the person who committed the predicate  
13                  crime, but the intermediaries who helped  
14                  facilitate that -- or who helped facilitate the  
15                  money laundering. So there was the amendment to  
16                  the Criminal Code that put in the term of  
17                  recklessness in allowing money laundering if it  
18                  was known to be done. And I've definitely heard  
19                  commentary from enough counsel within Canada  
20                  that it's still vague. And so something more  
21                  concrete on there is whenever there is an  
22                  attestation document by an enabler that they are  
23                  signing off that somebody is the true beneficial  
24                  owner, that there is a legal penalty on -- this  
25                  would go into the recklessness, but a very

1                   severe penalty on any -- whether it be the  
2                   so-called beneficial owner or the intermediary  
3                   who signed off on that. It creates a new  
4                   penalty that all of a sudden you can conduct  
5                   plea bargains with to find out who the true  
6                   beneficial ownership is, if it is a criminal, or  
7                   will be a deterrent for the intermediaries,  
8                   whether lawyers or accountants or anybody else  
9                   who would try and verify the information of a  
10                  criminal. If they see that it's a red flag,  
11                  they won't be tempted to game the system.

12                Q    I'm very mindful that I don't want to tread on  
13                   my colleagues' toes with respect to their times,  
14                   but maybe I can do this as a wrap-up. Are  
15                   there -- we've jumped around through many topics  
16                   through this discussion thus far. There will be  
17                   more to come. But are there any sort of key  
18                   items that anyone feels haven't been touched on  
19                   that you'd like to make sure we do cover before  
20                   I turn over to my colleagues?

21                A    (JC) I'd like to bring up one thing about -- you  
22                   know, we've been emphasizing a lot about a  
23                   Pan-Canadian registry and I kind of want to  
24                   touch on that. It's in our report on how to  
25                   implement a Pan-Canadian registry and the fact

1                   that we -- it won't be as good to have every  
2                   jurisdiction -- the federal government, the  
3                   provinces and the territories all have their own  
4                   separate registries that don't communicate to  
5                   each other.

6                   One, some jurisdictions don't have the  
7                   resources to conduct the enforcement that we're  
8                   talking about or they even need support to bring  
9                   up their registries to a certain standard. So  
10                  this is why we need one unified Pan-Canadian  
11                  registry, and there are definitely  
12                  jurisdictional issues that run into this. So we  
13                  can look at it in terms of -- and these are  
14                  options as opposed to one specific plan. Do all  
15                  registries feed into one registry held by the  
16                  federal government that the information is then  
17                  collected and so they're all cooperating  
18                  together, or does a federal registry kind of  
19                  vacuum that information from all the other  
20                  registries and hold it? I think that is a very  
21                  important -- and that they all have -- as  
22                  Mr. Dent pointed out, there is the same  
23                  standards for data collected and the same  
24                  verification standards for data collected across  
25                  all registries. That is hugely important in a

1 country like ours.

2 And then there's the idea of does this  
3 registry even have to be associated with the  
4 corporate registries? Because we're still  
5 talking in terms of, you know, say, the federal  
6 corporate registry and is this -- would all this  
7 beneficial ownership data would be a hindrance  
8 on compliance or Canada's place in ease of doing  
9 business. I personally feel that the arguments  
10 laid out today actually show that it reduces red  
11 tape and makes business easier. But if there's  
12 still consideration that the corporate registry  
13 is not the best place to do this, then could it  
14 be considered that a beneficial ownership  
15 registry be an entirely separate registry under  
16 the ministries of finance? Because it's the  
17 ministries of finance, particularly the federal  
18 ministry of finance, that has obligations to the  
19 Financial Action Task Force on money laundering.

20 So if there is a point of -- or if there's  
21 different points of views at the federal level  
22 within industry Canada and finance Canada on the  
23 nature of a registry, it should be considered.  
24 And I'm not saying it's the best -- there's  
25 definitely considerations to think through

1 jurisdictionally but to fulfill our obligations  
2 with the Financial Action Task Force and the  
3 benchmarks that are continuing to go forward on  
4 beneficial ownership transparency around the  
5 world, is it just best to separate it out?

6 (CT) I would just like to make one point.  
7 Maybe -- I don't want to talk too much about the  
8 nature of whether it should be -- things should  
9 be Pan-Canadian or whatever because I don't feel  
10 that I know enough about some of the specific  
11 issues. We know about the snow-washing  
12 investigation. Our data's been used in  
13 investigations into organized crime in Quebec,  
14 for example. So I know little bit about the  
15 Canadian situation.

16 But fundamentally what we're talking about  
17 here when we're talking about anything of any  
18 size is not BC money laundering; we're talking  
19 about global money laundering. This is not a  
20 BC problem. BC might be a conduit, a vector for  
21 this. The rule of law. The fact that actually,  
22 you know, you get a fair trial in BC. The fact  
23 that maybe prosecutions can be drawn out and  
24 appealed and so on. Maybe that it's --  
25 Canadians are a pretty nice bunch of people, you

1 know, and also that Vancouver and BC property is  
2 seen as desirable, seen as safe, it's a nice  
3 place to live. There's lots of reasons why  
4 BC might be used. But it's a conduit and it's a  
5 global problem.

6 And we've seen, you know, in terms of the --  
7 many of the stories about the -- about money  
8 coming from China, money come from the east,  
9 money coming from Eastern Europe as well and  
10 that this is a global problem. These networks  
11 are global; they are not BC. And anything that  
12 has any British Columbian beneficial ownership  
13 solution or even company register solution, for  
14 that matter, that treats it as a silo, that  
15 treats it as a local problem, will fail.

16 And you need to be able to connect this data  
17 up to the data in the UK and be able to walk up  
18 the path and see oh, this says that this company  
19 is the -- this is owned by -- this person is  
20 controlled by this person in the UK via this UK  
21 company. You know, if you can -- if you can't  
22 see that, then your -- the networks which  
23 actually exist and the mechanisms by which money  
24 is transferred, by which legal ownership is  
25 transferred, won't be solved. And if it

1                   doesn't -- you know, if the question is how do  
2                   we ensure that BC is known for its integrity and  
3                   stops these problems happening, stops property  
4                   being inflated, stops money being laundered in  
5                   BC, and it doesn't -- you know, and it doesn't  
6                   consider the fact that most of the biggest  
7                   criminals and the money launderers will be  
8                   outside of BC, possibly outside -- probably  
9                   outside of Canada to a degree as well and that  
10                  the access to solve this are going to be -- and  
11                  the data that solve this is also outside of  
12                  Canada, in part, it's going to be one that is --  
13                  that will fail and won't make those differences.

14                                So we have to consider this to be a  
15                                multi-jurisdictional, not even just a Canadian  
16                                problem, but one where all of this data can be  
17                                put together and that that genuinely solves --  
18                                makes life difficult for the criminals.

19                  Q        Ms. Johnson, Mr. Dent, any last points to touch  
20                                on?

21                  A        (PD) So one of the things -- and I was following  
22                                along with what Mr. Cohen was talking about in  
23                                terms how would a system like this in a country  
24                                like Canada, where should the data reside.  
25                                Because of its federated system in Canada, we're

1           a more complex structure than, say, the UK,  
2           which is a single-regulator country. And that  
3           creates real tangible difficulties that don't  
4           exist in other jurisdictions for us.

5                     Now, at the risk of reopening a discussion  
6           that's already been closed, I want to go back to  
7           the discussion around paying for access. There  
8           are realities in Canada -- because of its  
9           federated system but also because of the way  
10          that governments in Canada have managed their  
11          registries is not uniform either, it makes it  
12          difficult to say that this data is going to be  
13          housed in one centralized system and this is how  
14          it's going to be shared that doesn't take into  
15          account how things have evolved in the country  
16          up until this date.

17                    So, you know, in terms of the governments in  
18          question, while they own the data, they don't  
19          necessarily in every jurisdiction own the  
20          registries that operate or basically run that --  
21          you know, the registries that cover that data in  
22          every jurisdiction.

23                    A good example is Ontario and Manitoba.  
24          Part of their registries in those two  
25          jurisdictions are managed by a company by the

1 name of Teranet. Teranet is owned by OMERS,  
2 which is the Ontario Municipal Employees  
3 Retirement Fund, so it's not really owned by the  
4 government per se although the government is --  
5 in both of their jurisdictions is their sole  
6 client. And so to basically -- you know, I  
7 agree that it -- we need a model in place that  
8 takes data and aggregates that data into a  
9 useful platform, but that platform and how it is  
10 managed, are we going to create that from  
11 scratch, or are we going to use existing  
12 capacity and capability that has already been  
13 built up within Canada in the various registries  
14 across the country?

15 You know, there's a degree of pragmatism in  
16 terms of leveraging what has already been  
17 developed rather than beginning anew, so to  
18 speak. And so in many jurisdictions there is a  
19 competency or capacity that's been developed in  
20 managing data like this and in doing it in a  
21 federated data model or a distributed data model  
22 that would allow for that data to be shared from  
23 various stakeholders in various jurisdictions.

24 A federated model requires the data to be  
25 homogenous in nature. So that means you would

1                   need more of a unified structure across how the  
2                   data is collected, what that data looks like in  
3                   every jurisdiction or you could go to a  
4                   distributed model where you would have more of  
5                   a -- allow for more heterogenous data to be  
6                   collected. So you wouldn't necessarily have to  
7                   drive uniform compliance across the board in  
8                   every jurisdiction in how they're collecting  
9                   that data and how they're storing that data and  
10                  in what formats. But there are arguments for  
11                  both in terms of cost, in terms of ease of use,  
12                  in terms of just operational ability of that.

13                         So -- and I think that, you know, in terms  
14                         of how we break this down, whether or not it's  
15                         free access for everybody or we recognize that  
16                         there are parties that would gain more benefit  
17                         from gaining access to wider sources of data  
18                         than others. But also because they require  
19                         greater, broader access to data, that requires a  
20                         different level of investment of infrastructure.  
21                         And if it's just a private citizen making a  
22                         query, the infrastructure may not need to be as  
23                         complex. But if it's a large institution making  
24                         large data bulk requests to comply with various  
25                         pieces of legislation or to do whatever work

1                   they need to do with that data, then a different  
2                   degree of investment and architecture and  
3                   structure is going to be necessary.

4                   So it's not -- it can't be a one size fits  
5                   all solution either. And the more complicated  
6                   we make this, the less likely it's going to --  
7                   we're going to resolve the bigger problem in  
8                   Canada. And so that -- I just leave it there.

9                   MR. MARTLAND: Mr. Commissioner, thank you. Those  
10                   are my questions for the panel. I believe there  
11                   are four participants with questions.

12                   THE COMMISSIONER: Yes, thank you, Mr. Martland.

13                   Ms. Hughes on behalf of the Province, who  
14                   has been allocated ten minutes.

15                   MR. HUGHES: Thank you, Mr. Commissioner. We have  
16                   no questions for this panel.

17                   THE COMMISSIONER: Thank you, Ms. Hughes.

18                   Ms. George on behalf the Law Society of  
19                   British Columbia, who also has been allocated  
20                   ten minutes.

21                   MS. GEORGE: Thank you, Mr. Commissioner. We also  
22                   have no questions for this panel.

23                   THE COMMISSIONER: Thank you, Ms. George.

24                   Ms. Tweedie for the BC Civil Liberties  
25                   Association, who has been allocated 15 minutes.

1 MS. TWEEDIE: Yes. Thank you, Mr. Commissioner.

2 **EXAMINATION BY MS. TWEEDIE:**

3 Q So first a question for the whole panel. We've  
4 heard over the last two days of hearings about  
5 many potential benefits of creating a beneficial  
6 ownership registry; however, would you agree  
7 that it's largely too early in the  
8 implementation of the beneficial ownership  
9 transparency regime to truly measure its impact?

10 Perhaps, Mr. Taggart, if I could ask you  
11 first.

12 A (CT) Okay. Well, I think we've -- I guess  
13 there's a couple of things. One is the UK  
14 register's been going quite a while now, and  
15 we've seen -- we have see impact there. Law  
16 enforcement are using it. You know, the law  
17 enforcement people I speak to find that useful.  
18 It's -- journalists I've spoken to are finding  
19 it useful. John Githongo, who is a veteran  
20 anti-corruption investigator in Africa, one  
21 of -- in Kenya, one of the highest profile  
22 anti-corruption investigators in the whole of  
23 Africa -- he's one of our trustees -- he finds  
24 it useful and the journalist that he works with  
25 finds it useful. So I think we are seeing this.

1                   We're seeing -- in terms of the benefits, in  
2                   terms of the increased transparency, we're  
3                   definitely seeing that there. In terms of being  
4                   able to understand corporate networks, we're  
5                   seeing that. In the downsides, we are not  
6                   seeing that at all. So I think that we are  
7                   seeing that evidence. And the fact that  
8                   companies are leaving when they do have  
9                   increased scrutiny, problematic companies,  
10                  Scottish limited partnership who are  
11                  overwhelmingly used by criminal enterprises, and  
12                  we are seeing those go. So I think we are  
13                  seeing the benefits.

14                  In terms of the -- the other aspect is that  
15                  we are not in a static world today. The world  
16                  is changing incredibly quickly, and I think that  
17                  there are a couple of things that are going on  
18                  at the moment. One is that the datarization of  
19                  the world. The world is becoming data.  
20                  That's -- you know, everyone is using data all  
21                  the time for good and for bad. And we are  
22                  seeing this in terms of the power that gives us  
23                  in our phones. We're also seeing that in terms  
24                  of our ability to be surveilled essentially from  
25                  our phones or our ability to for how we vote to

1                   be, you know, swayed through messages with  
2                   things, through social networks and so on. And,  
3                   again, those advertisements that are doing those  
4                   sorts of things are coming from companies.  
5                   Opague, anonymous companies are exactly those  
6                   ones that are doing it.

7                   So we are seeing ones where the datarization  
8                   of the world -- and actually too the  
9                   transactionalization of the world. The fact  
10                  that everything we do today is an explicit  
11                  transaction with a contract. We used to look at  
12                  a piece of paper called a map. Today we have an  
13                  end user licence agreement with Google and we  
14                  get data from them, we send data back and so on.  
15                  These are much more complex relationships and  
16                  these changes in technology and the changes in  
17                  data are being exploited by criminals as well  
18                  and by the corrupt.

19                  We're seeing corporate networks become  
20                  massively more complex. We're seeing the  
21                  beginnings of programatic company formation.  
22                  You know, this is ones where what is happening  
23                  at the moment in -- you know, let's say, in  
24                  Canada which hasn't yet done anything on  
25                  beneficial ownership. Canada has stayed still

1                   on that, but the world is moving on and the  
2                   criminals are finding ever better ways of  
3                   exploiting this sort of stuff.

4                   So this is one where we are seeing the  
5                   effects, and the effects are ones where  
6                   societies are being left behind, law is being  
7                   left behind and I think that our understanding  
8                   of the companies that we give our information to  
9                   or that supply us with information, not just the  
10                  giant companies but those that are paying for  
11                  Facebook ads or for Twitter or things like that,  
12                  our understanding of that is also diminishing  
13                  massively, and so -- and with it are basic --  
14                  our basic human rights. So I think we do -- we  
15                  are seeing that. But maybe not in that -- you  
16                  know, but maybe on a more subtle second level  
17                  way. If that answers the question.

18                  Q     Somewhat, yes.

19                  A     (JC) If I could --

20                  Q     Yes, go ahead, Mr. Cohen.

21                  A     (JC) In terms of is it too soon? I mean, it's  
22                  the definition of what's too soon, and as  
23                  Mr. Taggart put out -- or put forward, we've all  
24                  discussed the UK persons of significant control  
25                  registry has been around since 2016, and so far

1                   there's been response by the UK government in  
2                   terms of success and from the criminal side,  
3                   even from the corporation side, and we've seen  
4                   it being used and corrected, as Mr. Taggart  
5                   pointed out, in an iterative model. We've seen  
6                   other countries use it. Our colleagues at IT  
7                   Czech Republic managed to use the Slovak public  
8                   registry to identify that the president of Czech  
9                   Republic has allegedly used e-funds to run a --  
10                  or has used anonymous companies to access EU  
11                  funds. And so we have seen successes of it.

12                  And to to the point Mr. Taggart is saying  
13                  about data, what has definitely been a long time  
14                  frame is the catchup on the globalized network  
15                  of finances that our law enforcement hasn't been  
16                  able to access even with -- if we even take it  
17                  out of the global perspective. If we look at it  
18                  into the domestic perspective, anonymous  
19                  ownership of companies is increasingly used by  
20                  criminals to buy property, to hide their illicit  
21                  funds. The World Bank has reported that even  
22                  anonymous companies or shell companies were used  
23                  in major corruption cases.

24                  So there's this advancement of the lack of  
25                  transparency within the criminal world that is

1 moving more rapidly than law enforcement and  
2 regulators and the public who want to know  
3 what's happening to their public funds is going.  
4 So maybe, you know, there about a four- or  
5 five-year time span of publicly accessible  
6 registries, but there's a longer time span that  
7 we have of the lack of access to knowing who  
8 runs those companies that we're dealing with.

9 (MJ) Maybe I could just add one more point  
10 to those points that were already made. I mean,  
11 I think it would be really interesting to see  
12 some systematic, you know, empirical study  
13 coming out of this across the EU and the UK. I  
14 think it would be hugely interesting. I would  
15 say, though, that there is evidence already  
16 about their usefulness. And, I mean, I've been  
17 involved in a variety of respects in the sort of  
18 transparency movement in the extractive sector  
19 and elsewhere, and I think transparency is often  
20 a necessary but in and of itself insufficient  
21 condition to combatting corruption and money  
22 laundering and other crimes.

23 So you need the other pieces of the puzzle  
24 there. But I'm -- on this aspect of  
25 transparency, beneficial ownership transparency,

1 I mean, I'm very convinced that it is absolutely  
2 a necessary component to combat these evils that  
3 we've been talking about all morning.

4 And I think one -- you know, one thing to  
5 look at is the access of this information by law  
6 enforcement and the frequency of access, and  
7 from what we're seeing it's very high and that  
8 law enforcement agencies across these  
9 jurisdictions are using this information  
10 regularly in response to studies and surveys.  
11 And so this is information they probably didn't  
12 have access to in the past. So I think that's a  
13 very telling statistic. And of course there's  
14 other evidence, and I've put it into my  
15 submission as well.

16 Q Thank you. Actually, Ms. Johnson, if I could  
17 ask you a question. You had previously spoken  
18 very briefly about the way in which beneficial  
19 ownership registries could include private  
20 information that could attract privacy  
21 protection under the Charter and that  
22 infringements on privacy would need to be  
23 justified under section 1. Would -- having a  
24 tiered access database, could that be one method  
25 that could help ensure that infringement on

1                   privacy is as minimal as possible to achieve  
2                   legislative objectives?

3           A       (MJ) So a couple of thoughts on that. I mean, I  
4                   think a really critical question -- and this  
5                   goes back to, you know, the Charter analysis, is  
6                   what are the legislative objectives because of  
7                   course section 1 refers to -- well, section 1  
8                   jurisprudence always requires a legitimate  
9                   policy objective. So understanding what that is  
10                  and how the government frames that when it  
11                  passes the law will be really critical.

12                         As we've seen, and I put it in that report  
13                         and also in my submission, when you look at all  
14                         of the potential users of beneficial ownership  
15                         registries be they the public and consumers and  
16                         creditors and people performing due diligence  
17                         and then a whole variety of governmental and  
18                         non-governmental actors, journalists and so on,  
19                         I mean, it could certainly be -- the benefits  
20                         and the legislative purposes could certainly be  
21                         stated very broadly. So that's just sort of one  
22                         point.

23                         Another -- but looking specifically sort of  
24                         at your question, which is how do we protect the  
25                         privacy interests of Canadians when a beneficial

1 ownership registry is protected. My sense that  
2 the list of information that Brock put up on the  
3 screen earlier, you know, name, unique ID,  
4 et cetera, et cetera, that this kind of  
5 information doesn't attract a huge -- huge  
6 concerns under the privacy regime even to  
7 publicly disclose it. There are -- just to give  
8 a couple of examples.

9 Currently, as we speak, there are corporate  
10 registries. I know Peter Dent was talking about  
11 them extensively. These already have directors'  
12 names and in many cases their residential  
13 addresses. This is already being publicly  
14 disclosed and this has been the case for years  
15 and years and years. We also have under  
16 securities law, public traded companies, names  
17 and other information about insiders, that is  
18 people who own 10 percent or more of shares.  
19 This is also being publicly published on the  
20 internet.

21 So as you know, you could go to this SEDI  
22 website, the insider information. You can type  
23 in the name of a huge Canadian corporation, be  
24 it Barrick or Bombardier or any company, and get  
25 a list of those who own 10 percent of their

1                    shares or greater, namely the insiders, and  
2                    there's quite a bit of information available.  
3                    So this is again justifiable in our system under  
4                    securities law, which has sort of similar --  
5                    frankly similar rationales for protecting the  
6                    public from fraud. And, you know, the whole  
7                    securities setup is to protect the public and to  
8                    protect investors.

9                                       So all this to say I think most of the  
10                    information, it's already out there in  
11                    comparable registries. So I don't think the  
12                    answer is -- in my view, is to restrict this  
13                    information from public disclosure. I think, in  
14                    my view, the answer is to go, to look very  
15                    carefully at each field and do your privacy  
16                    analysis on each field and say, is this  
17                    particular information justifiable under  
18                    section 1? Is this really so rationally  
19                    connected it must be disclosed publicly? And if  
20                    not, it can still be made available to those who  
21                    need it. But meanwhile the vast proponents of  
22                    the information, the type of thing that is being  
23                    already made available for directors and for  
24                    insiders of publicly traded companies could  
25                    easily be disclosed under the Canadian privacy

1 regime, in my view.

2 Q So just as an example, then, one example that  
3 you gave in your paper of information that may  
4 not receive that protection would be individual  
5 citizenship or country of principal tax  
6 residence; is that correct?

7 A (MJ) Yeah. I mean, I did this analysis for the  
8 coalition, and they published the paper. And my  
9 own conclusion is that the information -- that  
10 type of information might be found to be  
11 protected under Canadian jurisprudence by a  
12 Canadian court. But like I said, I think every  
13 legislature will have to -- you know, every  
14 government will have to do its own privacy  
15 analysis. But that information -- and it's  
16 also -- it's not clear to me how necessary that  
17 is, but it could be that it's so important -- I  
18 mean, like Chris mentioned that it's been very  
19 useful in another context it publish citizenship  
20 information. So it might be so important, for  
21 example, that it would -- it could be justified  
22 under section 1.

23 Q Okay. But to be clear, you would advocate for  
24 an approach where each element of information is  
25 subject to a privacy analysis from the

1 government?

2 A (MJ) Yeah. I think that would be -- that would  
3 make a lot of sense because I think most of the  
4 information honestly would not be subject to  
5 privacy protection. I think most of it there  
6 would be strong justification for publicly  
7 disclosing it.

8 MS. TWEEDIE: Great. Thank you, Ms. Johnson. Those  
9 are all the questions I have for this panel.  
10 Thank you.

11 THE COMMISSIONER: Thank you, Ms. Tweedie.

12 Mr. Rauch-Davis for Transparency  
13 International Coalition who has been allocated  
14 25 minutes.

15 MR. RAUCH-DAVIS: Thank you, Commissioner.

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

17 Q The first question is for, Mr. Cohen. On the  
18 topic of legislative purpose, I wonder if you  
19 might give an indication of the potential  
20 impacts of a beneficial -- of beneficial  
21 ownership transparency or the -- how it might be  
22 a game changer to the money laundering  
23 activities?

24 A (JC) Well, one is -- I think it creates clarity  
25 with the -- as I mentioned earlier, the

1                   recklessness directive under the Criminal Code  
2                   as a number -- or at least there could be  
3                   counsel who sees a recklessness provision as  
4                   very straight forward. But I think that, you  
5                   know, having this obligation of signatory  
6                   validation by a intermediary creates a massive  
7                   dissuasion for intermediaries to want to work  
8                   with criminals under either monetary or prison  
9                   penalties. So I think that giving that added  
10                  tool to law enforcement and for -- to hold  
11                  somebody accountable or even to conduct plea  
12                  bargains with, I think that's a really excellent  
13                  use of a publicly accessible registry.

14                  I mean, just in terms of having the publicly  
15                  accessible registry being -- as we've talked  
16                  about throughout this panel, having -- the many  
17                  eyes principle, as Mr. Taggart pointed out to  
18                  you, being able to double-check a registry that  
19                  -- being able to check its flaws. I mean, the  
20                  non-profit Global Witness put out their scrutiny  
21                  of the UK registry before the UK government put  
22                  out their scrutiny of the registry, and they  
23                  pointed to many of the issues such as lack of  
24                  drop-down menus or lack of validation. And that  
25                  was really critical.

1                   And to that sense that we can say sure, law  
2                   enforcement gets access and let's just leave it  
3                   to them; why should anybody else have it?  
4                   Having a publicly accessible registry is a  
5                   deterrent for those who know that there's going  
6                   to be many eyes but also allowing eyes from far  
7                   reaching areas where the money comes to from the  
8                   predicate offence is very important.

9                   So there's a number of ways that a publicly  
10                  accessible registry would be a game changer in  
11                  the anti-money laundering field.

12                Q    I think you mentioned it towards the end, but  
13                   not just for the offence of money laundering but  
14                   it goes to the underlying offence as well,  
15                   including things like drug trafficking,  
16                   organized crime and fraudulent purchases.  Would  
17                   you agree it with that?

18                A    (JC) Yes, I'd agree.

19                Q    Would you agree -- are you familiar with the  
20                   fact that money launderers currently operate at  
21                   an excessively high success rate?  Something --  
22                   like, there's a failure rate of 99 percent from  
23                   law enforcement investigating money laundering?

24                A    (JC) Yeah, I've seen those estimations of the  
25                   inability of law enforcement to actually follow

1 money laundering because of all the reasons of  
2 opacity, of the fact that this is a global  
3 systems-level criminal activity that works  
4 between jurisdictions that don't always share  
5 information. I think it's -- we cited it in our  
6 2016 report where we looked at Vancouver real  
7 estate. I think it's -- the success rate is --  
8 compared to other crimes for the RCMP is vastly  
9 lower in money laundering compared -- to solving  
10 those crimes compared to other crimes where they  
11 have a higher success rate because of these very  
12 issues, which law enforcement does complain  
13 about, and their access to solve it.

14 Q And I suppose part of the difficulty with  
15 investigating this or part of the difficulty --  
16 or part of the reason for that failure rate is  
17 the difficulty in enforcement, the difficulty  
18 the RCMP have in investigating these types of  
19 crimes?

20 A (JC) Yeah, exactly. As I point to, you know,  
21 their success rate in other criminal areas is  
22 much higher compared to money laundering for the  
23 very -- I mean, the idea that the RCMP to  
24 investigate even the BC registry or some of the  
25 other registries in Canada, that they also have

1                   to pay when conducting an investigation -- we  
2                   found that out in some of our research for the  
3                   implementing a beneficial ownership registry  
4                   report. I was actually astounded by that fact.

5                   Q     And would you agree with me that in order to be  
6                   effective or in order to assist law enforcement  
7                   in raising their success rate, a proper registry  
8                   must include both a robust client identification  
9                   verification system and proper sanctions for  
10                  fraudulent or negligent reporting?

11                  A     (JC) Yeah, I'd agree. And verification,  
12                  validation of information is hugely important  
13                  especially because we're putting an emphasize on  
14                  this registry and its usefulness. It's --  
15                  without the -- it's the easy phrase of garbage  
16                  in, garbage out. If there isn't quality  
17                  verification and validation, we've created a  
18                  registry that will not fulfill its purpose and  
19                  could actually be a detriment to ourselves.

20                  Q     Thank you. My next question's for Mr. Taggart.  
21                  Mr. Taggart, you've often this morning  
22                  mentioned -- or referenced the UK PSC registry.  
23                  I take it that it is -- the UK has kind of been  
24                  a world leader in establishing that. Would you  
25                  agree with that?

1           A       (CT) I would, yes.

2           Q       But one of the problems is that their client  
3                    identification, verification and validation  
4                    system, it's not effective. Would you agree  
5                    with that?

6           A       (CT) I would say that, yes, it's -- well, I  
7                    wouldn't say it's wholly ineffective, but it  
8                    leaves a lot to be desired. Put it that way.

9           Q       And what -

10          A       (CT) There's a lot of potential improvement  
11                    there. And to be fair to them, they're working  
12                    on that improvement at the moment, so ...

13          Q       Right. So before when you said that the UK  
14                    system, they should be admired for taking the  
15                    bold first step but it's not a perfect system,  
16                    this is probably one of the inadequacies you  
17                    were referencing in that type of evidence;  
18                    right?

19          A       (CT) Absolutely. So I think that there's a  
20                    number of aspects. And, you know, I mentioned  
21                    at the beginning about -- when we were talking  
22                    about -- or mentioned about an hour ago when we  
23                    were talking about validation, they didn't  
24                    validate fields. You know, they just let people  
25                    put in a nationality, just type something in,

1                   and so you got lots of different ones there. It  
2                   made it very hard to look at this data, to find  
3                   anomalies, for the register to do it. They also  
4                   didn't have anybody that was actually internally  
5                   in the register that was actually analyzing the  
6                   data and trying to identify suspicious activity  
7                   essentially in the register. Now they have a  
8                   team there that work with civil society, but,  
9                   you know, take input from them and work with law  
10                  enforcement as well.

11                  And so, you know -- and then there is the  
12                  question of verification. Now, there's a  
13                  challenge, you know, in a number of ways. One  
14                  is which is that the register was always a  
15                  self-submitted register. Historically it was a  
16                  self-submitted register and the changes that  
17                  they're suggesting to make to require  
18                  verification so that when you become a director  
19                  of a company you have to disclose, for example,  
20                  you know, ID that proves that, who you are, that  
21                  that's really your name, things like that.  
22                  That's actually a big step away from  
23                  historically this being a matter of, if you  
24                  like, submissions and public statements that  
25                  we're making.

1                   Now, you know -- and so for the register to  
2                   do this, for the government to be moving down  
3                   that route is actually a big step to take. And  
4                   others -- I suspect the BC register is a similar  
5                   one which is taking things on face value. And  
6                   so, you know, this is a journey to walk and that  
7                   what would be a real shame is if the -- that  
8                   those that were coming after UK Companies House  
9                   with beneficial ownership registers started at  
10                  the same point rather than having learned those  
11                  lessons that has been, and one of those is about  
12                  the importance of verification. If you ask me  
13                  which would I rather have, an unverified  
14                  register tomorrow with this information where  
15                  people making attestations to what the -- who  
16                  the owners are or a perfect one in -- you know,  
17                  "perfect" in inverted commas -- in five years  
18                  time, I'd definitely take the shorter term  
19                  because that gives you scope for improvement,  
20                  scope for learnings. And actually just that --  
21                  when I've spoken to law enforcement just that  
22                  act of people lying on a public document is --  
23                  provides intent and so on and provides a useful  
24                  case when they're putting together an  
25                  investigation and so on.

1                   So I would urge not to try to make perfect  
2                   the enemy of the good, but absolutely, you know,  
3                   if BC goes down this route or Canada goes down  
4                   this route, it should be learning from the UK  
5                   experience, looking at where -- and from other  
6                   registers' experience around verification and  
7                   around how this can be done. And these days  
8                   it's actually really easy. You know, can get a  
9                   bank account in -- I got a bank account or a  
10                  debit card account, and I did it basically by  
11                  showing the camera. You know, I had to show I  
12                  had ID, like a passport and stuff, but I could  
13                  show my face. And that sort of recognition,  
14                  it's very, very high quality. It makes this  
15                  sort of thing really easy today and it doesn't  
16                  need to make it expensive either.

17                  And I don't think we're talking even, you  
18                  know, the providing bulk data access to  
19                  something that if BC register can't do it and  
20                  they've got great people -- technical people  
21                  doing things like OrgBook and so on. If they  
22                  can't do that that for a few thousands dollars,  
23                  you know, then there's something going wrong.  
24                  You know, 10- or 20- or \$15,000. Providing bulk  
25                  data files is an inexpensive thing to do.

1                   So these are not trivial things that we are  
2                   talking about. They do take thought. They do  
3                   take some work. They're going to be ones where  
4                   it's not always obvious which is the right  
5                   approach to take. But learn from others and  
6                   share the experiences. That would be my urging.  
7                   And not to try to make perfect the enemy of the  
8                   good.

9                   Q     Right. But when you say it's not always obvious  
10                   on what steps to take, in this case it is  
11                   obvious that client identification verification  
12                   is of critical importance to the success of a  
13                   corporate beneficial ownership registry,  
14                   wouldn't you agree?

15                   A     (CT) I would say it is -- you know, if you have  
16                   a gold, silver, bronze standard, if you want a  
17                   gold standard, absolutely, you must have that.

18                             It's not that everything else is useless,  
19                   but if you want to do this properly, then you  
20                   should have this. Absolutely. There is still  
21                   the challenge of -- you know, of whether that  
22                   person actually does control the company. And,  
23                   again, that is one where, you know, the --  
24                   making this properly available as public, this  
25                   is -- and there are other routes to going down

1                   that route.  Actually, you know, you could say  
2                   where things are going in blockchain and other  
3                   DLT, distributed ledger technology, is actually  
4                   share registers being digital and immutable and  
5                   that could prove the proof that you would  
6                   need -- to provide the proof that you need to  
7                   say that this person actually does at least own  
8                   those shares, which is a hard thing to prove  
9                   today.

10                   So there are ways that can be -- you know,  
11                   there are further steps that can be done even  
12                   beyond just the identity -- proving the  
13                   identity.  But yes, I a hundred percent agree  
14                   that that's the gold standard.

15           Q       So if it's not possible tomorrow, would you  
16                   agree that it's imperative a registry that is  
17                   established be allowed sufficient flexibility to  
18                   adapt to improvements in technology or  
19                   improvements in manners in which you could  
20                   verify client identification?

21           A       (CT) Absolutely.  And it needs to take this  
22                   approach.  They should be thinking just like  
23                   every other part of the internet in a digital  
24                   world is thinking, how can we be better next  
25                   year?  How can we better next year?

1           Q     Thank you. The next topic I wanted to ask you  
2                    about is in terms of access to information on  
3                    the beneficial ownership registry. I take it  
4                    you'll agree with me that setting up the access  
5                    regimen should always have an eye to an  
6                    international focus, and that's because the  
7                    majority of laundered funds in Canada and  
8                    British Columbia are coming from authoritative  
9                    states and international players; is that  
10                  correct?

11           A     (CT) Absolutely. A hundred percent.

12           Q     And so part of that is that the registry needs  
13                    to be built to allow public reporting and  
14                    whistleblowing from all over the world.  
15                  Wouldn't you agree with that?

16           A     (CT) Yes, I would.

17           Q     And so to your mind, and maybe I'll open this up  
18                    to the panel at large as well, is what features  
19                    would accomplish that goal of international  
20                    focus?

21           A     (CT) So I think there's a couple of things here.  
22                    One is, again, seeing these things as networks.  
23                    And I'd make one point before I go into this  
24                    which is when we are talking about -- I've seen  
25                    reference to, you know, foreign nationals being

1           a danger, you know, and I'm not saying that  
2           that's not a case. But when I've spoken to  
3           civil society in developing countries, you know,  
4           or even the diaspora, what they're concerned  
5           about, whether it's, you know, Nigeria or the  
6           DRC or wherever, you know, they're concerned not  
7           about the extraterritoriality of their -- of the  
8           bad guys in their country; they are concerned  
9           about their families that are suffering under  
10          corrupt regimes and so on and under ones where  
11          there isn't the rule of law and where the whole  
12          system has been undermined by corruption.

13                 So the international regime, if you really  
14          want to -- if Canada wants to be a country  
15          that's moving the whole world to a safer, more  
16          secure, more lawful place, then it absolutely  
17          needs to have that international aspect. Where  
18          those things can come from, you know -- those  
19          can come from, it can come from somebody that --  
20          it can coming from somebody that just can read,  
21          you know, the original script in the language,  
22          for example, or can see that that -- what that  
23          addresses.

24                 It can actually be from a company that --  
25          one of its competitors even. You know, a lot of

1                   whistleblowing actually comes from -- in public  
2                   contracting comes from losing companies. So it  
3                   can come from a whole wide range. It can even  
4                   come from law enforcement that don't have the  
5                   power to act locally, for example. So it can  
6                   come from all these different actors.

7                   The mechanism is fairly straight forward.  
8                   At its base level it's a question of, you know,  
9                   is this information wrong; is there a problem  
10                  with this information; tell us, and then having  
11                  that system. The UK has already established  
12                  something like that and it's getting results  
13                  from that. But there's also ones where, you  
14                  know, we've identified some systemic problems  
15                  because we've got access to the underlying data  
16                  as actually anyone would have. You know, it's  
17                  not just OpenCorporates but others have got --  
18                  you know, anyone's got access to the online  
19                  data.

20                  We sense it's systemic problems of -- as  
21                  have Global Witness. You know, because they  
22                  have taken an active view with, we want to  
23                  engage with people; we want to -- people to tell  
24                  us problems, then -- you know, we want you to  
25                  tell us how they think people are going to be

1                   misusing companies and so on. That engagement  
2                   has really moved things along and, you know, we  
3                   meet with companies at least every six months to  
4                   talk about those things, and I know other  
5                   organizations do as well.

6                                 And then, finally, I would say that  
7                   actually, just picking up on something that  
8                   Peter talked about earlier, you know, you might  
9                   not actually want to tell the register  
10                  immediately, but you might tell law enforcement.  
11                  You might want to know that -- actually that --  
12                  you know, you might want to be able to build up  
13                  an investigation. That fact that there's some  
14                  bad data on there could be useful in terms of  
15                  building up that investigation. And whether  
16                  it's following law enforcement, local law  
17                  enforcement or due diligence professionals who  
18                  are going to be tipping off law enforcement when  
19                  they pull together some case and so on, then I  
20                  think that, you know, there's some opportunities  
21                  there. And it's not just about fixing bad data;  
22                  it's about making life difficulty for the bad  
23                  guys.

24                  Q         And to facilitate the engagement of everyone, as  
25                  you just referenced, wouldn't it been imperative

1                   that information like citizenship and country of  
2                   origin be publicly available?

3           A       (CT) Personally I think so, and I don't -- but  
4                   I'm not coming from a Canadian context. And I'm  
5                   not sure -- I'm not aware of either the  
6                   constitutional issues or other factors there.  
7                   But it's been happening in the UK and it's not  
8                   been -- and there's not been difficulties there.  
9                   And certainly I know from people who are using  
10                  the States to filter down, you know, and to  
11                  screening and so on, or to find problems in the  
12                  data that -- not necessarily in the data, but  
13                  problems that the data uncovers by creating  
14                  actually AI generated networks of how companies  
15                  and criminal syndicates are operating together.  
16                  Those fields have been really important in terms  
17                  of doing that.

18                         But as I said, I'm not coming from a  
19                         Canadian legal perspective, so I can't speak on  
20                         that element.

21           Q       Thank you. I'd like to move on to the issue of  
22                   sanctions with the panel. So I take it from the  
23                   evidence this morning for the registry to be  
24                   effective there needs to be meaningful sanctions  
25                   for non-compliance.

1                   And perhaps I'll put this question to  
2                   Mr. Cohen again. In the LOTA, the beneficial  
3                   registry -- land ownership registry in BC that's  
4                   to take next effect this spring, there's an  
5                   offence for false declaration of beneficial  
6                   reporting. Are you familiar with that,  
7                   Mr. Cohen?

8                   A     (JC) Sorry, I was on mute. I'm aware of it.

9                   Q     Yeah. And so I take it that you would see that  
10                   as being imperative for -- as a tool for the  
11                   corporate ownership registry as well; right?

12                   A     (JC) False declaration, yes.

13                   Q     Yes. And with the false declaration, that's  
14                   where these sanctions should come into place;  
15                   right? Like heavy fines up to jail time, I  
16                   believe was your evidence this morning.

17                   A     (JC) Yeah, dependent on the case. I think, you  
18                   know, Peter Dent pointed out that there are  
19                   errors that are conducted that are  
20                   non-malicious. And I think the experience from  
21                   the UK registry is to give -- I think one of  
22                   their recommendations was about a one year kind  
23                   of rollout phase because there's going to be  
24                   small-, medium-sized enterprises that are just  
25                   engaging with us for the first time.

- 1                   But that said, based on law enforcement  
2                   being able to make a case and seeing the  
3                   evidence or, you know, based on a major red  
4                   flag, yeah, that would be a major penalty that  
5                   we would recommend.
- 6           Q        Would you agree that, yeah, for the most  
7                   egregious actions or egregious offences jail --  
8                   significant jail time is warranted?
- 9           A        (JC) Yeah, I would see that as one of the  
10                   possible sanctions.
- 11          Q        And necessary for an effective registry; right?
- 12          A        (JC) Yes.
- 13          Q        Yes. And are you familiar that the  
14                   BC Securities Act has a similar type of system  
15                   where they can include up to a \$5 million fine  
16                   and five-year prison sentence for making a false  
17                   or misleading statement in a filing?
- 18          A        (JC) I've been made aware of that, yes.
- 19          Q        Yes. So it's nothing new.
- 20          A        (JC) Yeah.
- 21          Q        I take it you'd agree with that?
- 22          A        (JC) Yeah, it's nothing new. There's a  
23                   precedence for it.
- 24          Q        Thank you. Mr. Cohen, you touched on the  
25                   Pan-Canadian registry towards the end of the

1                   evidence this morning. I'm wondering if you  
2                   have any suggestions for best practice on how  
3                   that type of system could be set up, and if you  
4                   could elaborate on that.

5           A       (JC) Yeah, so within our reports we put out two  
6                   different kinds of models as recommendations.  
7                   And drawing on Peter Dent's point about  
8                   making -- building up something from scratch  
9                   versus what we have, I take that point that  
10                  let's look at what's available, but I would say  
11                  we still need to bring up -- you know,  
12                  jurisdictions that have the weakest forms of  
13                  registries, there needs to be support from them,  
14                  probably funding from the federal government, to  
15                  bring those registries up to some kind of  
16                  standard.

17                         So once you have different standards there's  
18                         the federated distributed architecture. In that  
19                         case provinces and territories independently  
20                         collect the beneficial ownership data from  
21                         businesses and through an API the data is  
22                         provided to a central repository. So that can  
23                         be part of what Peter was discussing that  
24                         there's still the different registries that  
25                         hopefully are up to some kind of standard or at

1           least, you know, as Chris Taggart as pointed  
2           out, keep moving towards some kind of standard.  
3           And then once you have that, you have the tiered  
4           system, make data available to the public and  
5           select government agencies.

6                       And so this enables federal and provinces --  
7           this model enables the federal and provinces and  
8           territories to better control what data is  
9           included and it enables the federal, provinces  
10          and territories to determine when to collect the  
11          beneficial ownership data. So do they want to  
12          do it upon incorporation or during tax filing.

13                      You know, there is the potential for a loss  
14          of uniformity with that. Potentially we do have  
15          to factor through -- as Peter pointed out, let's  
16          not make -- I think we've heard a lot of that:  
17          let's not make the perfect the enemy of the good  
18          and what do we have to work with to actually get  
19          a registry launched. It's something definitely  
20          to consider. And then there's also the idea of  
21          a centralized architecture and this way  
22          businesses directly report beneficial ownership  
23          data to a central registry. And the tiered  
24          system makes the data available to different  
25          actors, whether it's the public or law

1 enforcement.

2 And the provinces and territories access the  
3 beneficial ownership data via cloud network and  
4 central registry, and then they can choose to  
5 add that information into their current  
6 registries. So there's one entity just making  
7 the registry who would -- then everyone feeds  
8 down that information, and it enables a certain  
9 amount of quality control. There's -- it's  
10 easier to manage the quality. It could also  
11 potentially reduce cyber threat through minimal  
12 amounts of data transfer.

13 So there's pros and cons to both of those  
14 models. I kind of leave it to an open  
15 discussion moving forward to hear more from  
16 technical -- as this conversation moves forward  
17 nationally and provincially as to what the  
18 better model for Canada's needs are. You know,  
19 I've personally been swayed by the centralized  
20 model although I heard Peter's argument on let's  
21 use what we have available, and those are  
22 persuasive arguments. So I think we could still  
23 have this conversation going forward.

24 Q Thank you.

25 MR. RAUCH-DAVIS: I'm mindful of my time,

1                   Mr. Commissioner. I just have a few more  
2                   questions for Ms. Johnson. I'll be brief.

3           Q       Ms. Johnson, trusts are explicitly excluded from  
4                   your report before the commission. Is that  
5                   correct?

6           A       (MJ) Yes, it is.

7           Q       Yeah. But you would agree with me that trusts  
8                   are also used to launder money and in tax  
9                   evasion and tax avoidance; right?

10          A       (MJ) I mean, I don't have a lot of data around  
11                  it, but I certainly imagine that to be the case.

12          Q       I wonder if anyone from the panel could agree  
13                  with that statement that corporate trusts,  
14                  personal trust, family trusts are also used to  
15                  launder money and engage in activities such as  
16                  tax evasion or tax avoidance?

17          A       (PD) It's true. That is the case, yes.

18          Q       Thank you, Mr. Dent. So, Mr. Dent, wouldn't you  
19                  agree there would be a risk that money  
20                  laundering activity would just switch from  
21                  corporations to trusts if there's not a similar  
22                  type of trust registry?

23          A       (PD) Yes. I mean, it's the argument of the path  
24                  of least resistance. So basically it would move  
25                  to the path of least resistance, and if trusts

1                   are the next vehicle to be used, then you would  
2                   see more active use of trusts in that manner.

3           Q       And what about partnerships?  Would  
4                   partnerships -- would all partnerships be caught  
5                   by the terms of the registry?

6           A       (PD) Well, no, not all partnerships would be  
7                   caught.  You know, it depends on the type of  
8                   partnership as well.  There are different  
9                   partnership structures, obviously.  I'm not  
10                  arguing that partnerships should not be part of  
11                  a public registry; I'm just saying that there  
12                  are different types of partnerships that exist.  
13                  There are small partnerships -- just like  
14                  there's different trusts.  There are small  
15                  partnerships, then there are widely held  
16                  partnerships as well, and it's unlikely that any  
17                  one partner in a widely held partnership would  
18                  exceed a 10 percent or a 25 percent threshold,  
19                  whatever the threshold was sought.

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

21           THE COMMISSIONER:  Thank you.  Anything arising from  
22                   that Ms. Tweedie?

23           MS. TWEEDIE:  Yes.  Just a question for Mr. Cohen.

24           **EXAMINATION BY MS. TWEEDIE (continuing):**

25           Q       So if someone is deliberately misrepresenting

1 information on a beneficial ownership registry,  
2 you would agree that this would likely be for an  
3 illicit purpose, money laundering, fraud ...

4 MS. TWEEDIE: Sorry, Mr. Rauch-Davis, you're not --  
5 there you go. Sorry.

6 Q Mr. Cohen, so you would agree that if you're  
7 misrepresenting information on a beneficial  
8 ownership registry, it would be to further  
9 illicit activity, money laundering, fraud, the  
10 issues that we've discussed that a beneficial  
11 ownership registry is meant to combat; is that  
12 correct?

13 A (JC) I would agree that's a highly likely  
14 reason, yes.

15 Q And that if someone were to be implicated for  
16 money laundering or fraud, they would face  
17 punitive sanctions arising out of that criminal  
18 activity; correct?

19 A (JC) Correct.

20 Q So my question is how -- in what circumstances  
21 would you justify not just jail time but  
22 significant jail time for a violation of the  
23 beneficial ownership registry requirements?

24 A (JC) I say it would have to be based on the  
25 case. I do not have a scaled system at the

1 moment which would constitute significant jail  
2 time, but let's take an example potentially of  
3 major drug or human trafficking organizations  
4 and somebody was the intermediary who knowingly  
5 falsified information on a beneficial ownership  
6 registry to allow -- to help facilitate that  
7 activity to occur. I would say that those are  
8 highly egregious crimes that would get  
9 significant jail time. You know, if the  
10 criminal would get significant jail time, why  
11 wouldn't their money person or their lawyer, if  
12 they knowingly helped facilitate that crime?

13 There's debate around large-scale corruption  
14 and what defines that, so would it be somebody  
15 -- a kleptocrat stealing millions or even  
16 billions of dollars from their own people that  
17 was meant to go towards education and health and  
18 other issues of inequality, would that lead to  
19 significant jail time if there was the  
20 possibility of jurisdiction? That would be a  
21 possibility.

22 Q So it's your opinion that in addition to any  
23 penalties imposed for being implicated in these  
24 crimes, for instance even in the case of the  
25 intermediary, I imagine there would be charges

1                   associated with facilitating fraud or money  
2                   laundering and they would go through the  
3                   criminal process. And in your opinion in  
4                   addition to that we should also have jail time  
5                   for breaches of -- for paperwork violations of  
6                   the beneficial ownership registry?

7                   A       (JC) In egregious cases knowing falsification,  
8                   yes.

9                   Q       Okay.

10                  A       (CT) I guess I would just add to that in terms  
11                  of we want this to be, you know, a register of  
12                  record that's trusted and we want people to be  
13                  able to trust this and take this seriously. And  
14                  I guess the question is is what sanctions  
15                  would -- what should be the sanctions should  
16                  that not happen.

17                               And to James's point earlier, you know, we  
18                               don't want this to be a cost of doing business,  
19                               and it may be that I don't know enough about  
20                               either the law in Canada nor some of the --  
21                               exactly how different offences are prosecuted.  
22                               But it strikes me that, one, there should be --  
23                               it should be treated as a serious act to  
24                               knowingly falsify this thing in and of itself.  
25                               Just because you -- you know, if you run down

1           somebody fleeing from a scene of a crime, that  
2           running down somebody doesn't get -- you know,  
3           it doesn't get ignored because you have --  
4           because you have committed a robbery or  
5           something like that. You know, this should be  
6           an offence and it should be treated as a serious  
7           offence.

8                         Now, the question is is those who are going  
9           to be doing that, what should be the sanctions  
10          and there are various ones, you know, in terms  
11          of both seizing their ownership -- in the UK the  
12          court may order the sale of the -- of their  
13          interests in the company and that when a person  
14          is a legal entity, we should be thinking as well  
15          when the beneficial owner goes to a legal entity  
16          and the legal entity makes that submission, for  
17          example, who is the -- what's the context there,  
18          and in that case we have it in the UK  
19          schedule 1(b) says where the person is a legal  
20          entity, an offence is also committed by every  
21          officer of the entity who is in default.

22                         So you can see ones where when you've got  
23          legal entities that are the actors there, that  
24          actually getting to those people and finding  
25          several -- you know, making them treat this as

1 a -- making the world, you know, understand that  
2 this is a serious act, there should be  
3 consequences to that.

4 I personally don't think that -- I don't  
5 think it's unreasonable in serious cases for  
6 that to be a deprivation of liberty,  
7 particularly if the fine -- unless there is an  
8 unlimited fine as well and assets can be done.  
9 You know, because it may be that you've got  
10 someone that's a billionaire, you could fine  
11 them a million; they don't care. So I think  
12 there does need to be something -- we could  
13 discuss where that lies, but I think we need  
14 to -- it does feel right that this is a serious  
15 offence of somebody deliberately falsifying such  
16 a register.

17 MS. TWEEDIE: Thank you, sir. That is all. Thank  
18 you.

19 THE COMMISSIONER: Thank you, Ms. Tweedie.

20 Mr. Martland, do you have anything arising?

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

22 THE COMMISSIONER: All right. Thank you.

23 All right. Well, thank you to the members  
24 of panel for the time and care you've taken in  
25 appearing before the commission and providing

1 the benefit of your expertise. I think  
2 probably, Mr. Taggart, you have worked fairly  
3 late into the evening on our behalf, and I'm  
4 grateful for that as well. So you're now all  
5 excused from further testimony.

6 And I think, Mr. Martland, unless I hear  
7 from you, we'll simply adjourn now until  
8 tomorrow morning at 9:30.

9 MR. MARTLAND: Thank you.

10 THE WITNESS: (CT) Thank you for the opportunity to  
11 present.

12 THE WITNESS: (PD) Thank you.

13 THE COMMISSIONER: Thank you.

14 THE WITNESS: (JC) Thank you.

15 THE REGISTRAR: The hearing is adjourned until  
16 December 1st, 2020, at 9:30 a.m. Thank you.

17 **(WITNESSES EXCUSED)**

18 **(PROCEEDINGS ADJOURNED AT 1:36 P.M. TO DECEMBER 1,**  
19 **2020)**

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