

**PROCEEDINGS AT HEARING
OF
JANUARY 14, 2021**

COMMISSIONER AUSTIN F. CULLEN

INDEX OF PROCEEDINGS

Witness	Description	Page
	Proceedings commenced at 9:30 a.m.	1
Nicholas Maxwell (for the Commission)	Examination by Mr. Isaac	1
	Proceedings adjourned at 11:08 a.m. Proceedings reconvened at 11:23 a.m.	76 76
Nicholas Maxwell (for the Commission)	Examination by Mr. Isaac (continuing)	77
	Examination by Ms. Magonet	144
	Examination by Mr. Rauch-Davis	160
	Proceedings adjourned at 1:13 p.m. to January 15, 2021	162

INDEX OF EXHIBITS FOR IDENTIFICATION

Letter	Description	Page
---------------	--------------------	-------------

No exhibits for identification marked.

INDEX OF EXHIBITS

No.	Description	Page
410	Curriculum vitae of Nick Maxwell	2
411	Canada in Context FFIS Briefing Paper to the Cullen Commission – January 4, 2021	23
412	FFIS, Case Studies of the Use of Privacy Preserving Analysis – June 2020 Version	133
413	FFIS, Case Studies of the Use of Privacy Preserving Analysis – January 2021	133

1

January 14, 2021

2

(Via Videoconference)

3

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

4

THE REGISTRAR: Good morning. The hearing is

5

resumed, Mr. Commissioner.

6

THE COMMISSIONER: Thank you, Madam Registrar.

7

Yes, Mr. Isaac. I think you are muted,

8

Mr. Isaac.

9

MR. ISAAC: Thank you, Mr. Commissioner. The next

10

witness is Mr. Nick Maxwell, who will affirm.

11

If Madam Registrar would please affirm.

12

NICHOLAS MAXWELL, a

13

witness called for the

14

commission, affirmed.

15

THE REGISTRAR: Please state your full name and spell

16

your first and last name for the record.

17

THE WITNESS: Nicholas James Maxwell, and that's

18

N-i-c-h-o-l-a-s James Maxwell, M-a-x-w-e-l-l.

19

EXAMINATION BY MR. ISAAC:

20

Q Thank you, Mr. Maxwell. You provided a copy of

21

your curriculum vitae to the commission; is that

22

correct?

23

A That's correct.

24

MR. ISAAC: Madam Registrar, if we could bring up the

25

document at tab 1, please.

1 Q Mr. Maxwell, do you recognize this as a copy of
2 that CV?

3 A Yes, I do.

4 MR. ISAAC: If we could enter that, please, as the
5 next exhibit.

6 THE COMMISSIONER: 410.

7 THE REGISTRAR: Exhibit 410.

8 **EXHIBIT 410: Curriculum vitae of Nick Maxwell**

9 MR. ISAAC: Thank you.

10 Q Mr. Maxwell, I'm going to ask just some brief
11 background questions about your education and
12 your professional experience before we turn to
13 your report. You are an alumni of York
14 University in the UK with a degree in politics,
15 philosophy and economics; is that right?

16 A That's correct, yeah.

17 Q You've also had academic internships and studied
18 at Ohio State University, the Washington Center
19 for Academic Internships and had a placement at
20 the American Council of Young Political Leaders
21 through the US state department; is that
22 correct?

23 A That's correct.

24 Q You graduated *summa cum laude* from the Defence
25 Intelligence and Security Centre, Chicksands, as

1 part of the advanced intelligence operator
2 course, military intelligence; is that right?

3 A That's correct, as a reservist in our UK
4 military intelligence reservist corps.

5 Q You are currently doing PhD research through UK
6 Research and Innovation with a focus on tackling
7 serious crimes through financial information
8 sharing and artificial intelligence supported by
9 the Queen's Centre for Secure Information
10 Technologies; is that right?

11 A That's correct, yes, with the Queen's University
12 Belfast school of Law.

13 Q I'd like to turn to your professional
14 experience. From 2010 to 2011 you were the
15 International Economics Program Manager with
16 Chatham House through the Royal Institute of
17 International Affairs; is that right?

18 A Yes, that's correct. It was the project
19 management role for the international economics
20 research department reporting to the director.

21 Q In 2012 you served as an analyst and liaison
22 officer for the UK Ministry of Defence stationed
23 in Afghanistan; is that right?

24 A Yes, that's correct. I was mobilized as a
25 reservist voluntarily and deployed for a

1 six-month tour but a 12-month mobilization
2 overall to serve in Afghanistan, focused on what
3 was described as threat finance but in military
4 language effectively looking at the financial
5 flows of support to the insurgency in
6 Afghanistan, and that really brought me to a
7 very significant interest in corruption which
8 affected my later career choices.

9 Q And leaving that service in Afghanistan you took
10 on various roles with Transparency International
11 between 2013 to 2016. Among those roles you led
12 the research program for Transparency
13 International UK focused on open data and money
14 laundering issues; is that right?

15 A That's correct, yeah. We established a large
16 body of research particularly looking at the
17 role of the UK as a money laundering centre and
18 the various vulnerabilities in terms of the UK
19 framework for the proceeds of corruption flowing
20 from around the world.

21 Q Since leaving Transparency International you've
22 been the -- provided consultancy services
23 through NJM Advisory? You're the founding
24 director of that advisory; is that right?

25 A That's correct, yeah.

1 Q And your consultancy focus is on anti-money
2 laundering public/private partnerships and
3 innovation, and through that you are currently
4 the lead of Future of Financial Intelligence
5 Sharing, or FFIS, research program; is that
6 right? And we'll describe that, I expect, in
7 more detail shortly.

8 A Yes, that's correct. It's a research
9 partnership with Royal United Services
10 Institute, RUSI centre, the financial crime
11 security studies but established by NJM
12 Advisory.

13 Q Mr. Maxwell, you're not a lawyer; is that right?

14 A Well, PhD in school of law, but no, not a
15 lawyer.

16 Q And you're not an expert on Canadian or any
17 other country's constitutional laws; is that
18 correct?

19 A Yes, that's correct.

20 Q And you're also not an expert on Canada or any
21 other country's privacy regimes; is that right?

22 A Well, obviously it has, you know, been a major
23 feature of our research and our activity in
24 Canada, but I don't claim to be an international
25 expert on the Canadian privacy regime.

1 Q You were asked to and you did prepare a report
2 for the Commission; is that right?

3 A That's correct.

4 MR. ISAAC: Madam Registrar, if we could bring up the
5 document at tab 3, please. We can bring down
6 the curriculum vitae.

7 Q Mr. Maxwell, do you recognize this as a copy of
8 the report that you prepared for the Commission?

9 A Yes, I do.

10 Q And the title is "FFIS Briefing Paper – Canada
11 in Context: Canadian Legislation, Supervision
12 and Operational Processes for
13 Information-Sharing to Defect Money Laundering
14 and Underlying Crime, Set in the Context of
15 International Practices." Before we get into
16 the substance of the report, perhaps you could
17 begin by explaining for the Commissioner what is
18 a public/private financial information sharing
19 partnership?

20 A Yes, very happy to. So this is really the
21 research focus of the Future of Financial
22 Intelligence Sharing research program, which was
23 established in very early 2017 and has been
24 running continuously since then. And our area
25 of interest was the concept of public/private

1 financial information sharing between public
2 authorities and regulated entities or reporting
3 entities, as they are referred to in Canada, and
4 the nature of that information exchange between
5 public entities and regulated entities in the
6 discovery, detection of money laundering,
7 terrorist financing, and broader economic crime.

8 Over the last five years there has been a
9 significant growth in what was relatively new as
10 an approach five years ago, financial
11 information-sharing partnerships, we call them
12 FISPs, but they can also be referred to as
13 public/private partnerships. Obviously that
14 means many things to many different people. So
15 in the sense of public/private financial
16 information-sharing partnerships, over the last
17 five years there has been a tremendous growth in
18 the establishment of these public/private
19 partnerships. They typically support, or can
20 support, two major types of information being
21 shared. Very much dependent on the legal regime
22 in the jurisdiction.

23 So this first level would be strategic
24 intelligence sharing, and this can be the
25 sharing of insight, of knowledge relevant to an

1 underlying crime threat by public agencies but
2 also the insight that's available from reporting
3 entities as well. And typically that results in
4 the development of typologies of that financial
5 crime -- sorry, was I being --

6 TECHNICAL SUPPORT: Sorry, Mr. Maxwell, please unmute
7 yourself.

8 THE WITNESS: I'm ready to continue if that works.

9 MR. ISAAC:

10 Q Yes, Mr. Maxwell. Sorry, I think we may have
11 had an audio spill into the feed there.

12 A No problem at all. So just to recap, these two
13 major types of information being shared by
14 partnerships, strategic intelligence on the
15 nature of financial crime threats typically
16 resulting in typologies and for the regulated
17 community for indicators that can serve as
18 guidance for them to what to look for in their
19 data to identify that particular crime threat
20 with more success. So that's strategic
21 information sharing. And that doesn't really
22 require any particular legal basis because
23 there's no sensitive information being shared.
24 It's about insight and about broad crime trends
25 and typologies.

1 partnerships that allow for it, you know, can
2 work very much hand in hand, so there's
3 strategic insights being drawn from tactical
4 information sharing and likewise tactical
5 information sharing being supported by a greater
6 strategic understanding of the threat.

7 So we published a survey just this year
8 which looked back over those last five years and
9 surveyed the international landscape with regard
10 to financial information-sharing partnerships.
11 And we covered 23 partnerships in the survey and
12 provided a lot of reference information and
13 details about how each individual partnership
14 worked, their governance, their objectives,
15 their membership. And, you know, stepping back
16 over those five years this idea has gone from
17 being relatively new, relatively disruptive to
18 the ideas that had previously dominated
19 beforehand that there should be a very strict
20 separation between law enforcement and financial
21 institutions relevant to concerns about money
22 laundering and financial crime, to really
23 viewing the regulated community or certain
24 reporting entities, typically the largest
25 reporting entities often the largest retail

1 banks but increasingly moving into other
2 sectors, the money service business sector in
3 particular, and looking at those entities as
4 partners in tackling crime and really very
5 massive data owners who are more able to search
6 their data and respond to law enforcement
7 interests if they have a steer from the public
8 sector about what they're interested in, whether
9 that's at a strategic level or whether it's at a
10 tactical level with specific entities.

11 And we can go into the details about
12 individual partnerships, but particularly
13 tactical level information sharing
14 public/private has been able to produce
15 significant results with regard to supporting
16 arrests, supporting asset recovery and other
17 outcomes for the anti-money laundering
18 anti-terrorist financing system, AML/ATF is the
19 Canadian acronym, you know, in a relatively
20 short space of time. And because of the early
21 successes of the early partnerships that's
22 really built up a lot of momentum around the
23 world, and we now see about 41 percent of world
24 GDP nations covered by a public/private
25 financial information-sharing partnership.

1 Q Sorry, may I just ask. One thing we'll turn to
2 is to discuss some of the previous research that
3 the FFIS program did prior to this. But perhaps
4 we could frame some of this. You're describing
5 the sort of growing trend over these years, but
6 as a bit of a framing question why focus on
7 information sharing? What is the significance
8 of that broadly to the issue of mitigating money
9 laundering and detecting financial crime such as
10 money laundering?

11 A Yes, well, it's a really important question. So
12 the international framework for addressing money
13 laundering and terrorist financing is
14 established under an intergovernmental task
15 force called the Financial Action Task Force,
16 and that was developed in the late 1980s and,
17 you know, now provides the international
18 standards that nations should seek to meet
19 according to FATF in order to support the
20 effectiveness of their regime.

21 Now, according to FATF, effective
22 information sharing is a cornerstone of a well
23 functioning AML/ATF or CFT framework, and the
24 reason is because the system really relies on a
25 very complex set of interactions between private

1 sector and public sector, multiple public sector
2 organizations and obviously multiple sectors in
3 most countries as reporting entities. The
4 system really puts the private sector as the
5 leading edge of the detection of money
6 laundering and it's up to the private sector to
7 spot suspicions of money laundering and
8 terrorist financing within their business within
9 their client base and to report that through to
10 public agencies through to a dedicated financial
11 intelligence unit, which was a new public agency
12 created under the FATF framework, and then
13 financial intelligence units have various roles
14 and responsibilities around the world, various
15 different constructs, but in essence their job
16 is to get intelligence related to those reports
17 of money laundering through to law enforcement
18 agencies and other actors who use intelligence
19 to support criminal justice outcomes.

20 There's a big emphasis on prevention in the
21 Financial Action Task Force regime as well, and
22 the idea there is that if according to FATF if
23 certain conditions are met then there's an
24 aspiration that illicit flows would be prevented
25 from accessing the financial system. Now, that

1 around the world is not working very well, but a
2 key area where both on the disruption side and
3 on the prevention side where there's a
4 requirement is for information sharing. So
5 there are, you know, basic levels of information
6 sharing hardwired into the FATF frameworks and
7 that's the idea that the private sector should
8 report their suspicions to the FIU and that be a
9 regulatory obligation. But increasingly through
10 these partnerships we've seen enhanced forms of
11 information sharing that have really
12 demonstrated significant results in terms of
13 effective outputs and outcomes.

14 Q Thank you. And if I could ask the FFIS program,
15 if you could describe some of the work that the
16 program has undertaken prior to the report that
17 we will be looking at shortly in and around the
18 study of FISPs and their development
19 internationally?

20 A Yes, very happy to. Again this was our
21 overriding focus. We actually -- my own
22 personal involvement with Transparency
23 International in the anti-corruption summit in
24 London in 2016 had a big set of commitments that
25 a number of countries had signed up to with

1 regard to supporting more effective
2 public/private financial information sharing, so
3 about 40 countries actually committed at that
4 anti-corruption summit. Very shortly after that
5 the UK experienced the Brexit vote and a change
6 of government, the first of many, and there was
7 a real drop in the UK government's ability to
8 kind of lead on this agenda and a real gap in
9 terms of following up on those commitments that
10 were made at the anti-corruption summit. So
11 that was really the genesis of the Future
12 Financial Information Sharing research program
13 that we would look at the early models of
14 public/private information-sharing partnership
15 and draw into the public realm data as it
16 existed on the effectiveness and the workings of
17 those partnerships, and really kind of bring
18 that to countries that were interested in
19 developing their own partnership framework.

20 So in 2017 we published the first
21 international comparative study of financial
22 information-sharing partnerships worldwide.
23 We've published a number of different
24 international comparative studies since then
25 looking at issues, you know, challenges at the

1 forefront of how these partnerships were
2 developing. As I mentioned just in 2020 we've
3 published the worldwide annual survey. It's
4 now, we hope, an annual survey of partnerships
5 and the states of partnerships worldwide. Our
6 first study covered six partnerships, including
7 Canada, and Project Protect in particular, and
8 the 2020 study, as I mentioned, covered
9 23 partnerships. So there's been a big growth
10 in that time.

11 We've also convened a lot of events in
12 jurisdictions interested in partnership
13 approaches where we bring together public
14 authorities, various agencies, regulated
15 entities, research stakeholders, civil society
16 stakeholders to discuss those issues about
17 information sharing, about what jurisdictions
18 want to achieve with regards to disrupting
19 economic crime, what particular sensitivities
20 might be around the way in which that takes
21 place, the balance with privacy as an incredibly
22 important policy sphere and the interplay
23 between privacy and financial crime policy
24 objectives.

25 So we've convened well over -- before COVID

1 well over 50 events worldwide, physical events,
2 and we continue to do that in person -- sorry,
3 virtually in 2020. In Canada in particular
4 we've had a number of events, which I can go
5 into if that's helpful.

6 Q That would be, yes. Actually that was my next
7 question, which is if you could describe some of
8 the engagement that the FFIS program has had in
9 relation to Canada.

10 A Yes. So very strong engagement and that's more
11 broadly beyond the Future of Financial
12 Intelligence Sharing. RUSI as a think-tank does
13 a lot of work in Canada with regard to the
14 Centre for Financial Crime and Security Studies,
15 and Canadian authorities have been very open and
16 keen to see how they could learn from
17 international practice. Likewise the private
18 sector, keen to support that type of
19 international dialogue and case studies to
20 support the Canadian debate.

21 So some big activity over recent years. In
22 April and May 2018 working with the Canadian
23 Bankers Association and the Department of
24 Finance we conducted a major survey with
25 regulated entities from the CBA membership and a

1 cross-government survey supported by the
2 Department of Finance. Looking at the
3 permissibility, perceptions of the
4 permissibility of information sharing in Canada.
5 The background to this was that there was felt
6 to be different views about what was possible,
7 confusion about what was possible within the
8 Canadian regime, legal regime, for supporting
9 information sharing for anti-money laundering
10 purposes and the idea of the survey was to
11 surface those uncertainties, to surface those
12 divergencies and we held a number of events kind
13 of deconstructing the results and talking those
14 through in a public/private realm.

15 The top line was that there was significant
16 divergence in understanding about what was
17 permissible, and therefore, you know, a lack
18 of -- certainly a lack of efficiency in terms
19 of, you know, what was being achieved within the
20 regime versus perhaps the policy intent.

21 We followed up with that with a big
22 conference in 2019. We had a major conference
23 in Toronto which brought together a very wide
24 range of public agencies and regulated entities
25 and talked through recent developments in Canada

1 with regard to public/private information
2 sharing, sharing perspectives on the value,
3 limitations of those approaches in Canada to
4 date, identifying lessons, looking at
5 technology, looking at the opportunities to
6 learn from fraud prevention and cyber security
7 in particular, and of course achieving greater
8 coherence between financial crime and privacy
9 issues, policy requirements in Canada.

10 Then just in December 2019 before we were
11 slammed with COVID-19 we held an in-person
12 cross-government event in Ottawa looking at the
13 opportunity of privacy preserving analytics,
14 privacy enhancing technology, which is a new
15 field of cryptographic standards and techniques
16 which enable information to be shared in a way
17 that was previously not possible. So you can
18 share analytical results through these
19 cryptographic techniques without sharing the
20 underlying data, and we can get into that in a
21 bit more detail. But there was significant
22 interest from Canadian authorities in that and
23 we hosted a workshop as part of a broader
24 international study just at the tail end of
25 2019.

1 So delighted to have run this study for the
2 commission and, you know, very keen that RUSI
3 and FFIS continue to support as far as we can
4 the Canadian debate on more effective and
5 efficient and proportionate results in Canada.

6 Q And we will turn to discuss the report itself.
7 But you describe this past work that you had
8 done in engagement with Canada. Were you able
9 to draw on that work and that research for the
10 purposes of this report?

11 A Yes, we were. So the -- obviously you know all
12 of that dialogue and insight had fed into
13 various papers that we produced in the meantime
14 relevant to those years, so that gives a very
15 good foundation for responding to the request
16 from the commission, which was to look in the
17 realm of information sharing effectiveness and
18 efficiency and proportionality in Canada in
19 reference to innovations and practices taking
20 place elsewhere in the world. So that was
21 certainly a very strong starting point. More
22 specifically Department of Finance supported
23 this research effort by releasing the survey
24 results from the public sector that I mentioned
25 that we conducted in 2018, and that's included

1 as supplementary information in the paper that
2 we've produced for the Commission.

3 Obviously we've been able to get very good
4 access to -- for interviews for the study and
5 that draws from our previous work in Canada and
6 the trust and confidence that stakeholders have
7 in Canada for the work that we've produced and
8 its -- and our awareness of sensitivities in
9 Canada.

10 Q You mentioned you conducted -- we'll get into
11 the methodology of the report in a moment. You
12 mentioned you conducted interviews specifically
13 for the purpose of this report. Were you able
14 to conduct interviews for the purposes of this
15 report specifically with federal public agencies
16 in Canada? What can you tell us about that?

17 A No, so I'm very happy to describe the
18 methodology, but primarily we were focused on
19 interviewing senior stakeholders in the major
20 reporting entities in Canada, which was
21 primarily focused on banking but also the money
22 service business sector, and then we also
23 interviewed a number of firms and/or
24 consultants, large and smaller, who have a
25 client base that reflects a broader set of

1 sectors who are seeking to comply with the
2 regulations for money laundering. So it's very
3 much a private sector focused series of
4 interviews. That's in part, in a large
5 part because of the guidance I received from the
6 commission that because the Government of Canada
7 was a participant in the process that there
8 would be challenges in terms of interviewing
9 public sector agencies for this study because
10 obviously they are providing direct witness
11 testimony to the commission. So our study, and
12 I can go into the methodology in more detail,
13 primarily focused on private secretary concerns,
14 private sector challenges and then a lot of
15 additional desktop research on the available
16 information produced by agencies and the
17 Government of Canada in addition to our previous
18 material.

19 MR. ISAAC: Thank you. Mr. Commissioner before I go
20 further if we could mark, please, this report as
21 the next exhibit. I believe it's exhibit 411.

22 THE COMMISSIONER: Sorry, I was muted. Very well,
23 411.

24 MR. ISAAC: Thank you.

25 THE REGISTRAR: Exhibit 411.

1 **EXHIBIT 411: Canada in Context: FFIS Briefing**
2 **Paper to the Cullen Commission - January 4, 2021**

3 MR. ISAAC: Madam Registrar, if we could go to
4 page 2, please, of the report.

5 Q And this is the contents. If you could explain
6 for the Commission, Mr. Maxwell, just describe
7 the structure of your report. As we go into the
8 report I expect we'll use the overview of your
9 findings as the sort of key roadmap, but it
10 would be helpful to understand how you've
11 structured the report and what the different
12 components address, please.

13 A Absolutely, so it's a fairly weighty report. So
14 what we've done is kind of bring all of the key
15 findings together in an overview of findings
16 which is pages 3 to 33, and you know, that
17 really does provide all the key points and
18 recommendations, but obviously some of those
19 bullet points are very significant statements
20 which I'm sure any committed reader would want
21 to get behind well, why exactly have you
22 concluded that that bullet point? So we include
23 a reference annex 34 -- pages 34 to pages 124,
24 which is all of the comprehensive supporting
25 material that backs up all the key points in the

1 overview of findings. So that includes
2 obviously the primary research material, key
3 points made by interviewees brought out as
4 unattributed quotes and then additional
5 contextual analysis, very significant literature
6 review and desktop research efforts which kind
7 of built from the points being made by the
8 interviewees to make sure that we had a full
9 understanding and were providing the full
10 reference information about the available
11 information produced by the Canadian government
12 and various agencies.

13 And then throughout we include a number of
14 international and case studies from outside of
15 Canada to support awareness about how similar
16 challenges have been addressed by the countries.
17 Those are provided in a very kind of brief
18 summary in the overview of findings and then
19 expanded in the reference annex. And then
20 finally pages 126 to 133 reproduce the 2018 FFIS
21 survey of permissibility of information sharing
22 as from the public sector side, so a collated
23 response from a number of Canadian public
24 agencies.

25 Q Thank you. And as I indicated, we will use the

1 33 page roadmap overview of findings as our
2 roadmap, but if at any point you think it would
3 be helpful to refer back to the supporting
4 material in the annex, please let us know and we
5 can turn to these sections of the report for you
6 to identify.

7 Perhaps we could begin, if we turn please to
8 page 5, registrar, of the report, what were the
9 objectives of the report and what methodology
10 did you use?

11 A Yes. So responding to the request from the
12 commission our objectives were really to
13 describe the international context developments
14 with regards to information sharing for
15 anti-money laundering and terrorist financing
16 purposes and to have that record in a way that
17 was useful for Canadian stakeholders. So to do
18 that we needed also to analyze Canada's current
19 processes, the regulatory regime, legislative
20 provisions for information sharing to detect
21 money laundering and underlying crime. And then
22 to move further to understand, as I say, private
23 sector views on the strength and limitations of
24 that information sharing series of gateways if
25 they exist within the Canadian AML/ATF regime

1 and then to kind of highlight those challenges,
2 place them against how similar challenges have
3 been addressed by comparable jurisdictions and
4 then to pull from that opportunities that there
5 are in Canada to draw from that international
6 set of case studies to enhance the Canadian
7 regime or to offer material for consideration by
8 Canadian stakeholders to think about what is
9 most appropriate in Canada.

10 So describing international developments,
11 analyzing Canadian processes, identifying
12 private sector views on strength and limitations
13 of the Canadian regime and then raising those
14 opportunities for reform based on the
15 international case studies relevant to the same
16 challenges.

17 Q Thank you. And in the next section you set out
18 methodology. If you could just briefly
19 summarize the methodology that you used for the
20 purposes of the preparation of the report.

21 A Yes. So a literature review of course, open
22 source research, looking to update our previous
23 material, in particular the 2018 survey and the
24 2019 major conference events. And then our
25 primary research took place from November to

1 December 2020 where we interviewed a number of
2 key stakeholders in the AML/ATF regime. So we
3 covered all big six financial institutions in
4 Canada, very senior level representation in the
5 interviews, two senior individuals from
6 multinational reporting entities but non-"Big
7 6," and then seven further individuals who were
8 from financial crime consultancy firms with a
9 broader set of typically smaller financial
10 institutions, credit unions, other sectors into
11 beyond financial sectors as clients.

12 And then in reference to the non-Canadian
13 case studies we conducted again a literature
14 review and a number of interviews with key
15 decision-makers involved in those various case
16 studies and projects to support to make sure
17 that we had the very latest information to
18 present to as relevant to the same Canadian
19 challenges. And then the desktop analysis, as I
20 mentioned, guided by the challenges identified
21 by the private sector, really drawing all the
22 possible information that we could to see what
23 was there relevant to the challenges that were
24 identified by the private sector.

25 Q Thank you. If we go to page 6 of the report,

1 here you describe how you went from 12 key
2 themes that were identified as part of the 2020
3 survey you described to 8 themes around which
4 this study is formed. If you could briefly
5 explain those 12 themes that were identified in
6 the survey and how those were distilled down
7 into the 8 themes around which this report is
8 organized.

9 A Yes. So you know to start with we drew from the
10 2020 international survey of public/private
11 financial information sharing which Canada was
12 represented in and from that study we'd
13 identified 12 key themes that were relevant to
14 the future growth of these partnerships. They
15 included the adequacy of legal gateways, of
16 course, issues around privatization, the
17 opportunities for partnerships to enhance their
18 strategic intelligence products. Partnerships
19 status within the supervisory regime. Most
20 partnerships around the world have been
21 additional, voluntary, extra to the main AML/ATF
22 supervisory and regulatory structures, so this
23 idea of, you know, well, what significance do
24 partnerships have when it comes to regulation is
25 a key one. The capacity for membership growth,

1 of sectoral growth. Some partnerships are just
2 focused on retail banking. Others have been
3 much more ambitious with regard to which sectors
4 are involved. The use of technology, pathways
5 to enhance the benefit of partnerships being
6 communicated to non-members, so to the wider
7 regulated sectors. How they manage risk
8 displacement, so any law enforcement effort can
9 create risk displacement by virtue of its
10 success. So how are partnerships managing that.
11 Then at a more strategic level how are
12 partnerships measuring and evaluating their
13 performance. The link between public/private
14 partnerships and private/private information
15 sharing, which is a major trend from a policy
16 reform perspective around the world. And some
17 very significant developments around how
18 private/private sharing pre-suspicion,
19 pre-filing and also post-suspicion in come cases
20 is supporting, you know, the more effective
21 detection of crime. The governance,
22 accountability and transparency of these
23 partnerships and cross-border collaboration. So
24 that covers a lot. So it's unlikely that we
25 were going to be able to -- or that all of those

1 themes were perhaps priority themes for Canada
2 just because of the stage of development that
3 Canada was in. So from the interviews we really
4 narrowed narrowed down on eight themes, if that
5 is narrowing down, to a 133 page study, but
6 eight themes which focuses on one, the
7 understanding of the effectiveness and
8 efficiency of the AML/ATF regime, because time
9 and time again that seemed to be a major
10 challenge in Canada that the data on
11 performance, particularly when it comes to
12 outcomes, was not there.

13 Theme three, a strategic understanding of
14 threats such that there was an understanding of
15 the criminality that was to be addressed by the
16 AML/ATF system. Three, the idea of
17 prioritization of economic crime threats, and
18 this is kind of cross-government prioritization
19 that can have an influence on what regulated
20 entities do. Many interviews referring to the
21 kind of growth of different initiatives in
22 Canada which, you know, some of which have
23 provided real strength to the Canadian regime
24 but that there was a real lack of prioritization
25 and coordination between these efforts. Theme

1 four, public/private tactical information
2 sharing. So this is really where Canada
3 probably stands out as a common law jurisdiction
4 because out of all of the common law
5 jurisdictions in the 2020 survey, Canada is the
6 only jurisdiction that doesn't permit
7 public/private tactical information sharing for
8 intelligence purposes outside of the formal
9 reporting process.

10 Theme five, the extent of public/private
11 co-production of strategic financial
12 intelligence. This has actually been the real
13 strength of the Canadian regime. Without the
14 legal basis for tactical information sharing all
15 of the effort has gone into public/private
16 co-production of strategic intelligence, and
17 obviously we cover what has been produced in the
18 study. Six, relevance to law enforcement
19 outcomes. Partly because the Canadian regime
20 has been established with certain
21 responsibilities for certain agencies and the
22 way in which the FIU has been established, there
23 is a big disconnect between regulated entities
24 who are that frontline of the money laundering
25 anti-money laundering system and the end users

1 of intelligence. So it goes through a number of
2 stages before the information gets back to law
3 enforcement, who are the ones who are meant to
4 act on the intelligence, and there's very little
5 opportunity for law enforcement to have that
6 dialogue with regulated entities about what they
7 are interested in tactically. So relevance to
8 law enforcement outcomes was a big theme.

9 Theme seven, private/private financial
10 information sharing to detect crime. So this is
11 interesting because the Canadian regime is
12 actually the kind of opposite of the US legal
13 regime where the Canadian PIPEDA legislation has
14 a specific carve-out for fraud, private/private
15 financial information sharing but doesn't
16 support private/private sharing for money
17 laundering crimes and all the predicate crimes
18 that relate to money laundering. So there seems
19 to be a real gap there, particularly in
20 comparison to the US.

21 Theme eight, is mitigating the negative
22 impacts of account closures. So a big output
23 and result of the current Canadian regime is
24 that the vast majority of instances of suspicion
25 of money laundering at some point will result in

1 an account closure by regulated entities, but
2 that doesn't always have positive outcomes. So
3 for instance, if those cases, those clients are
4 relevant to law enforcement cases and account
5 closure could actually really disrupt the flow
6 of information to support a case against those
7 suspects. Likewise, you know, if we think about
8 one regulated entity debanking, or it's called
9 demarketing in Canada, demarketing a client,
10 well, where does that client go? And without
11 private/private sharing, you know, that client
12 finds a way to support their financial services,
13 and we talked through that in the final theme,
14 but that was a really major concern by regulated
15 entities because some of the quotes that we
16 pulled out of the interviews were really
17 astounding, you know, stakeholders saying that
18 this happens almost 100 percent of the time. So
19 there's all of this effort and all of this
20 resource going into understanding risk and very
21 often the result when they found something is to
22 close an account and really that suspicious
23 entity does not find it difficult to regain
24 access to the financial system. And then that
25 new regulated entity has to repeat the process

1 and this kind of goes on, you know, on a massive
2 scale and massive duplication of resources every
3 day in Canada.

4 So those are the big challenges that kind of
5 came out of the interviews, and then, you know,
6 we pull the relevant information from the
7 relevant interviews into that structure and then
8 use that to support the desktop analysis.

9 Q If we go to the next page of the report, Madam
10 Registrar. So we're going to go and examine
11 each of those themes and your findings and
12 recommendations that emanate out of them.
13 Before we do at the top of this page you refer
14 to a range, a wide range of factors that fall
15 outside the scope of your report but that you
16 say remain relevant to AML effectiveness such as
17 law enforcement and FINTRAC resourcing and
18 technical capacity. And pausing there just so
19 we appreciate the significance of this and the
20 importance of FISPs in the context of the
21 broader AML regime, is an implication of this
22 what you're saying here is that if we were to
23 improve the financial information-sharing regime
24 in Canada as you recommended it would still be
25 important to consider such things as, for

1 example, the capacity of law enforcement or the
2 FIU to use and to act on that information?

3 A Absolutely. So we spoke about the complexity of
4 the system for anti-money laundering and
5 anti-terrorist financing within the FATF
6 framework and, you know, I just drew out some of
7 the other issues which are very, very
8 significant which would be in addition to
9 information sharing. So it's absolutely the
10 case that information sharing alone, you know,
11 can't solve some of the challenges of
12 effectiveness. But, you know, what we've
13 highlighted are those big barriers to effective
14 information sharing, but to consider
15 effectiveness in the round you would obviously
16 have to consider the firm level preventative
17 measures, know your customer checks, due
18 diligence, the corporate and trust beneficial
19 ownership transparency issue, which I know is a
20 really big, hot topic in Canada and has been
21 subject of your interests. The regulation of
22 professional sectors, so again I think a hot
23 topic in Canada. So in Europe, for instance,
24 the legal sector, accountancy sector are all
25 covered by AML regulations, but other

1 jurisdictions just kind of moving into that
2 space of supporting regulation for non-financial
3 businesses and professions. The foreign policy
4 side, the sanctions regime, you know, obviously
5 a very significant part of the overall financial
6 crime world, compliance world. And law
7 enforcement and FINTRAC resources. Actually
8 there I think from the 2019 budget, you know,
9 there has been significant attention on
10 financial crime, and we can talk about that
11 later on, but there has been commitment of
12 resources. I think what's challenging in Canada
13 is while there's been commitment of resources we
14 haven't seen the same attention particularly on
15 the information-sharing issues, and some of our
16 interviewees referred to, you know, the risk
17 that that money would not produce results
18 because we're not dealing with those broader
19 policy and systemic issues. But on resources
20 it's clearly important and it's something which
21 has received support in Canada from central
22 government.

23 Adequacy of coercive powers. So again I
24 think there's been attention there in Canada to
25 try to improve the ability to prosecute money

1 laundrying offences. Cross-border information
2 sharing. The range of sector specific issues
3 that might be relevant outside of retail banking
4 and money service businesses, which was our main
5 focus in this study. And then specific policy
6 issues. So, you know, it really does go on and
7 on, for fintech, different payment technologies,
8 virtual assets, threat specific considerations,
9 you know, specific to terrorist financing,
10 specific to proliferation financing, specific to
11 human trafficking. It can be a bewildering
12 array of issues that are relevant to
13 effectiveness. As I mentioned, information
14 sharing is a cornerstone to an effective regime,
15 but it's not the entire foundations. And of
16 course you are covering those broader issues in
17 the commission, but it's not what we covered in
18 the study.

19 Q Thank you. And if we turn to the next page,
20 this describes, is a diagram sort of describing
21 your approach to the study. I think you've
22 already described that, so I won't have you
23 repeat that now. But if we go to the next page,
24 page 9, you describe four strategic challenges,
25 and if you could just identify what those

1 strategic challenges are. We'll get into the
2 substance of them I anticipate in the next
3 portion of your evidence, but if you explain
4 what this page illustrates and also whether or
5 not the ordering of these strategic challenges
6 has some significance or are they ranked in
7 order of priority. If you could explain that
8 for Mr. Commissioner as well, please.

9 A Yes. So we obviously go into detail about the
10 eight enabling themes which can support more
11 effective results on information sharing which
12 are drawn from the challenges that we
13 identified. But if we really take a very
14 high-level view we pulled out four strategic
15 challenges for the effectiveness of the Canadian
16 AML/ATF information-sharing regime.

17 And the first we describe as limited
18 strategic vision on how the Canadian AML/ATF
19 system should develop. I'm sure we'll go into
20 it in a second. There are mitigating comments
21 or developments that we might want to highlight
22 that show what has been done in Canada, but
23 overall certainly at this point we have
24 concluded that strategic challenge number 1 is
25 that limited strategic vision, that

1 cross-government view and commitment to
2 addressing the effectiveness challenges in the
3 AML/ATF regime and to, you know, reach the
4 required policy clarity on information sharing.
5 And so because of that lack of strategic focus
6 and commitment, strategic challenges 2 and 3
7 really flow from that. So this is the
8 insufficient or the lack of the public/private
9 financial information sharing tactical level
10 legal gateway to share information between
11 public agencies and regulated entities as there
12 is from our 2022 survey in every other common
13 law jurisdiction that was covered in that
14 survey. So we'll go into that, I'm sure, in a
15 large way in this hearing testimony.

16 Strategic challenge 3, related but distinct,
17 the inadequate private/private financial
18 information-sharing opportunities to detect
19 money laundering in Canada. So if you think
20 about it, it's very, very common, identified in
21 numerous typologies, basics of money laundering
22 that money laundering efforts would span
23 multiple financial institutions, but yet the
24 ability to detect money laundering is in the
25 Canadian regime really siloed in the individual

1 30,000 plus regulated entities that are obliged
2 to report. And so without that information
3 sharing the detection is really stymied in the
4 ability to identify networks of crime, and
5 therefore there are effectiveness challenges.
6 And that can lead to over-reporting. So it's a
7 privacy challenge potentially as well, because
8 without the ability to resolve a concern by
9 checking with a counterpart's financial
10 institution, without the bigger picture of other
11 client's behaviour across multiple banks,
12 there's a real emphasis on, you know, reporting
13 where you can't discount that risk otherwise.
14 So that can lead to defensive reporting,
15 reporting just in case. There's no penalty for
16 over-reporting, but there certainly is a penalty
17 for underreporting. So that just drives a lot
18 of reporting on Canadian transactions to the
19 FIU.

20 Number 4, strategic challenge. And this is
21 a challenge not just for Canada but for many
22 jurisdictions that the system really
23 incentivizes firm level risk management. So
24 each regulated reporting entity is encouraged to
25 manage their risk, but the way they do that is

1 that when they find risk, they typically exit
2 that client, and that can really produce
3 system-wide vulnerability. And so we talk about
4 risk displacement and the effect that can have
5 particularly on more vulnerable smaller
6 financial institutions that maybe don't have the
7 expertise of the bigger reporting entities to
8 identify crime, and is it providing a
9 preventative result, is it providing an
10 effective deterrent to crime, is it stopping
11 crime. Real challenges when the emphasis on
12 firm level risk management and not system-wide
13 vulnerabilities. So those were the four
14 challenges. Challenge 4 is a challenge right
15 across the world, you know, almost hardwired
16 into the FATF system, so that's more difficult,
17 but limited strategic vision is very much within
18 the gift of the Canadian government and
19 policymakers and with that vision, you know, we
20 would expect attention on public/private
21 financial information sharing and
22 private/private financial information sharing
23 and we would hope recognition of strategic
24 challenge 4 even though that's a much bigger
25 bite to chew on.

1 Q Thank you. Well, let's start then with
2 strategic challenge 1. If we go to the next
3 page of your report, Mr. Maxwell. I'll begin,
4 you'll see this is a format that you've used to
5 address each of these strategic challenges. So
6 perhaps before you describe the substance if you
7 could just explain how you've structured this
8 portion of your report and what the different
9 areas address.

10 A Yeah, so again this is all summary of the
11 broader reference annex. So each bullet point
12 has many paragraphs supporting it in the
13 reference annex, but under the four strategic
14 challenges we've identified those factors
15 contributing to that conclusion and then
16 provided information about, you know, well, what
17 currently exists, what should you be aware of if
18 you're really trying to address this strategic
19 challenge, what should you recognize in terms of
20 all of the good activity that's going across
21 Canada, all of the efforts of really committed
22 and very able public servants from policymakers
23 through to the operational agencies. There's a
24 lot of fantastic people who are working very
25 hard. So it's important to highlight some of

1 that activity, but it doesn't take away from the
2 conclusions that we reached on the red side, the
3 factors contributing to the strategic challenge.

4 Q Well, if you could take us through those factors
5 and explain -- I think you've given a bit of an
6 introduction to the limited strategic vision
7 challenge, but if you'd like to explain that
8 further and then take us through the factors
9 that contribute to it, please.

10 A Very happy to. So when we're talking about this
11 limited strategic vision we're talking about
12 does the Canadian AML/ATF system respond to the
13 scale of economic crime threats facing Canada,
14 does it understand those threats, does it
15 recognize the effectiveness and efficiency
16 challenges within the AML/ATF regime in Canada
17 and does it address those shortcomings. Is it
18 clear on the public/private and private/private
19 information sharing requirements to reach the
20 desired outcomes. And we say obviously that
21 there is a limited strategic vision. So, you
22 know, what currently exists, you know, Canada
23 appears to be very influenced by the FATF
24 evaluation process, and that's not unusual. A
25 poor FATF result haunts a government for a

1 decade and a very poor FATF result could result
2 in, you know, serious economic impacts. If, for
3 instance, the US or the EU were to put a
4 jurisdiction on a grey list or a blacklist, a
5 really damaging effect for economic growth for
6 access to finance. So the results really
7 matter. So it's not unreasonable that they do
8 have prominence in government thinking.

9 But these come around every decade and, you
10 know, they are driven by the system that was
11 created back in the 1980s and, you know, it's
12 not founded in Canadian stakeholders thinking
13 what is most appropriate to Canada, where are
14 our big threats and how is our system working.
15 It does help Canadian policymakers think through
16 those issues, but it's not domestically driven.
17 But in addition in Canada you do have
18 parliamentary scrutiny every five years. Now,
19 we've put that as a factor contributing to the
20 challenge because, it's relatively infrequent.
21 So the parliamentary scrutiny does provide
22 tremendous value, but every five years having a
23 set of recommendations and working through
24 those, you know, we think that's not enough. So
25 outside of the FATF evaluation, the existing

1 publicly available performance information on
2 the Canadian AML/ATF regime is not sufficient to
3 inform policymakers, the public, interested
4 stakeholders about the effectiveness of the
5 regime. So the data isn't there. It's not
6 being collected, and that's a real challenge if
7 you're interested in effectiveness if you don't
8 collect the information that would help you
9 understand ineffectiveness.

10 Q And pausing there, Mr. Maxwell, why do we care
11 about understanding the effectiveness? What is
12 the significance of that to that effectiveness
13 in terms of both understanding it as well as
14 potentially communicating it to stakeholders?

15 A Well, I mean the first point to make is that
16 we're talking about really heinous crime. So
17 where crime is felt by citizens, where it's felt
18 by provinces, you know, obviously the premise
19 and foundation of your commission is that there
20 is a widespread concern that money laundering is
21 flourishing in Canada, if I can quote the
22 mandate of the commission. And money
23 laundering, you know, has a predicate set of
24 crimes underneath it. So we're talking about
25 drug trafficking; we're talking about contract

1 killers; we're talking about serious organized
2 crime; we're talking about people who prey on
3 the most vulnerable in society. You know, human
4 trafficking. So all of these crimes have a
5 tremendous social harm in Canada and obviously
6 the commission has kind of resulted from this
7 bubbling up of concern in British Columbia about
8 the runaway apparent growth of money laundering,
9 and I know you've produced a number of papers on
10 how that's manifested in different sectors, but
11 real estate, casinos. And if your system isn't
12 working, well, obviously you're not going to
13 address financial crime and it may continue to
14 flourish; it may continue to undermine law and
15 order, and obviously all the harm of the victims
16 themselves. But we've seen also in other
17 countries how a lack of attention, particularly
18 to proceeds of corruption -- you know, in the UK
19 there was a major study around vulnerabilities
20 to Russian influence and the ineffectiveness in
21 tackling influence by individuals, PEPs, who
22 were associated to the Kremlin but had still
23 managed to gain positions of influence primarily
24 through money -- was considered a national
25 strategic issue, a national security issue. And

1 then of course we have terrorist financing which
2 is, you know, possibly the biggest national
3 security concern. It's a public concern, and if
4 your system isn't working, you are reduced in
5 your ability to detect, disrupt and prevent
6 these crimes.

7 Q Thank you. And the other component of my
8 question was about the importance of having a
9 clear understanding of whether the regime is
10 effective or how it may be effective and
11 possibly having that information available to
12 stakeholders and those involved. Is there a
13 significance to that that you have observed
14 through your research and work on this subject?

15 A Yes, well, I suppose it's kind of basic
16 statement that for policy to be affective in
17 achieving its goals, it needs to be able to
18 evaluate, you know, how well the system is
19 working. So we highlighted a December 2017
20 study by Michael Levi, who is a very well
21 respected academic in this space who looked at
22 five jurisdictions, national risk assessments.
23 In Canada it's called the national inherent risk
24 assessment. But he included Canada and he drew
25 from that process that evaluation is a

1 touchstone of contemporary policymaking. Good
2 policy requires systemic and transparent
3 evaluation, and he goes on to describe how
4 significant it is to understand and evaluate the
5 AML system because of its far-reaching
6 implications in society and the number of public
7 and private entities involved.

8 So transparency and systematic evaluation,
9 absolutely key to good policymaking. Failures
10 of policymaking, in part because of failures of
11 a robust understanding of effectiveness, will
12 lead to failures of outcomes. In this case it's
13 that long list of social harms and heinous
14 crimes that we spoke about.

15 Q Thank you. And if we go to the next page,
16 page 11 of the report, we're still looking at
17 the same strategic challenge of limited
18 strategic vision. The next point here relates
19 through the range of publicly available threat
20 assessments being inadequate. If you could
21 explain what that factor is that contributes to
22 this broader strategic challenge you've
23 identified.

24 A So the FATF evaluation process requires that
25 jurisdictions understand threats and risks, and

1 that should result in a regular national threat
2 assessment and national risk assessment process.
3 So the only product that exists for a national
4 risk assessment in Canada is the national
5 inherent risk assessment, and that was only
6 produced prior to the FATF evaluation which
7 reported in 2016 some of the interviewees raised
8 a concern that the national risk assessment
9 process is only produced for FATF's benefit and
10 doesn't have a regular role in Canadian society,
11 and policymaking and the fact that it hasn't
12 been produced since then would give strength to
13 that argument.

14 Now, when we think about individual crime
15 threats and the latest understanding of those
16 threats, there is significant information
17 produced by FINTRAC and others, but it's
18 limited. So you would not be able to find, if
19 you were regulated entity and you were in charge
20 of identifying crime in your business, you would
21 not be able to find the range of threat
22 assessments that cover the economic crime
23 threats facing Canada. So without that
24 understanding of the scale and nature of
25 economic crime threats facing Canada it's

1 difficult for you as a reporting entity to use
2 the tools at your disposal to identify crime in
3 your business. I'll just highlight some of the
4 ways in which Canada does produce material
5 because this is really important.

6 In terms of effectiveness FINTRAC has
7 produced year on year improvements in their
8 annual reports. FINTRAC as the FIU has a
9 limited mandate within the Canadian regime and
10 they've worked really hard I think to produce as
11 much information as they can within their remit,
12 but the problem is that many of the outcomes and
13 the challenges of data, you know, rest outside
14 of FINTRAC, so that's a key point to make. The
15 Department of Finance produce an annual report
16 to parliament on their results, activity based
17 on 16 programs of policy across multiple
18 agencies. And that's detailed on activity. So,
19 you know, compared to other jurisdictions that's
20 actually a real strength of the Canadian regime
21 to have that regular reporting. But again, if
22 you poured through those 7,500 words as the
23 committee have done on an annual basis you would
24 not be able to understand how effective the
25 Canadian regime is because it just talks about

1 activity, and that's obviously the first point
2 in understanding performance, but it's not
3 outcome-based performance management. The most
4 powerful document that we have to guide Canadian
5 policymaking right now is the statutory review
6 process. So the "Confronting Money Laundering
7 and Terrorist Financing" recommendations from
8 parliament, a statutory review, "Moving Canada
9 Forward," published in 2018. This is a
10 wide-ranging document which does grapple with
11 multiple issues beyond information sharing and
12 publishes recommendations which include many of
13 the recommendations that we've highlighted in
14 the FFIS study.

15 The problem is it's a parliamentary scrutiny
16 report. The Government of Canada has produced a
17 response saying that they support many of the
18 recommendations, and they refer to it in the
19 budget, the 2019 budget, as the roadmap to
20 respond to current and future threats. So
21 basically there has been an outsourcing of the
22 strategic process in the Canadian government to
23 this parliamentary statutory review process,
24 which in and of itself is not necessarily a
25 problem, but the fact is we are not seeing the

1 action on the recommendations related to both
2 public/private information sharing and
3 private/private information sharing.

4 There's also been commitments to address the
5 lack of cross-government ability to understand
6 the effectiveness of their regime, and the most
7 significant development was in 2019 with the
8 establishment of the Anti-Money Laundering
9 Action, Coordination -- I can't see where the
10 "E" comes in, but that stands for ACE. ACE
11 Fusion Team. And that given \$24 million
12 Canadian over five years and part of their
13 mandate is to prioritize the development of a
14 performance-measuring framework in cooperation
15 with finance.

16 So Canada recognizes some of these
17 challenges, but you know, if we were to look
18 right now then the conclusion still holds both
19 on threat, lack of threat understanding and lack
20 of understanding of effectiveness.

21 Q The next item here refers to that there is
22 beyond industry estimates there's no official
23 estimates of the cost of compliance to the
24 private sector. We will, I think, return to
25 look at the cost of the regime that we currently

1 have and the benefits its delivering in a bigger
2 manner, but at least at this point could you
3 explain what that factor is contributing to this
4 strategic challenge, please.

5 A Yeah, absolutely. So as we talked about at the
6 start, the AML/ATF regime is a public/private
7 regime which is very complex and puts lots of
8 obligations on different parties. The biggest
9 obligation is on the private sector in terms of
10 the amount of money that's spent. Now, the
11 government has created that spend through the
12 process of developing the regulatory obligations
13 and, you know, from all of the documents that we
14 talked about that the government does produce in
15 Canada, none of them recognize the overall cost
16 of compliance with the AML/ATF regime and say
17 okay, as a Canadian society public and private
18 we're spending this much and these are the
19 results we're getting for this money. So we can
20 talk about some of those numbers. I think we
21 can unpack them in a way that might be more easy
22 to understand in terms of the proportions
23 involved. But the vast majority of spending is
24 in the private sector. We can draw on private
25 sector estimates. So LexisNexis in 2019

1 estimated that the Canadian reporting entities
2 spend 5.1 billion US dollars per year on
3 compliance with the AML/ATF regime. So 5.1
4 billion is being spent and there's nothing in
5 the public sector reporting framework which
6 recognizes this spend and seeks to place it
7 against outcomes. And, therefore, cost
8 effectiveness, it's not apparent at all, that
9 although FINTRAC do say that cost effectiveness
10 and efficiency is something they're looking to
11 improve, there's no information that you can
12 draw on from the publicly available material
13 that indicates that they are taking steps to
14 improve cost effectiveness. The latest effort
15 by the Department of Finance on the latest
16 regulatory reform estimates put a certain
17 estimate of costs, 18 million over ten years for
18 the entire regulatory population. But the
19 interviewees in our process consistently raised
20 significant doubts about the robustness of that
21 estimate.

22 Though we haven't got into the process in
23 detail it was criticized in interview for just
24 relating to the cost that would result from an
25 audit or an inspection and not that whole AML

1 compliance piece. But this is a massive amount
2 of money that's being spent by Canadian society
3 and it's not being recognized in the public
4 material.

5 Q And I mentioned we would return to this but you
6 have noted -- mentioned the share of the cost as
7 between the private sector and the public
8 sector, and why don't we go into that in a
9 little bit more detail now. If you could just
10 explain a little bit more how that cost burden
11 that you've described is shared, and perhaps put
12 that in context of the threat that is being
13 addressed, if you could unpack that for us,
14 please.

15 A Yeah. Absolutely. So it's difficult to find
16 estimates of the overall threats in Canada. As
17 an example, there are regulatory produced
18 assessments in the States, and in the UK the
19 current estimate for the National Crime Agency
20 is in the hundreds of billions of dollars --
21 pounds of money laundering taking place every
22 year. So that is just a bit of a benchmark.
23 The best we can draw from Canada is a 2007
24 estimate by the Criminal Intelligence Service
25 in Canada which placed it at approximately US 47

1 billion per year money laundering, proceeds of
2 crime. The RCMP came in in 2011 and gave a much
3 more conservative range between US 5 billion and
4 US 15 billion, and then the current national
5 inherent risk assessment just says billions of
6 dollars. So if we take the threat within this
7 conservative estimate from RCMP the midpoint
8 being 10 billion US, and we're not taking
9 account of inflation since 2011, so it's a very
10 conservative estimate. And we look at the
11 public sector response. So we draw from the
12 departmental results report, which helpfully
13 does provide, and this is really good in terms
14 of transparency of individual programs, does
15 provide the funding on an ongoing basis that's
16 being provided to the 16 key government programs
17 for supporting the AML/ATF regime, and it's
18 about 70 million Canadian dollars spent per year
19 on the regime.

20 In addition, the 2019 budget produced a lot
21 of kind of pop funding to supplement that with
22 special funding for special agencies and
23 additional funding for RCMP of a significant
24 amount, another 70 million over five years and
25 20 million per year to enhance federal policing.

1 As I say, there is money being thrown at this
2 problem, which is part of what is required.

3 But if we place that against the overall
4 threat it would kind of give you an
5 understanding of the challenge. So if we're to
6 imagine this overall figure of 10 billion US,
7 which we'll stick with a certain exchange rate
8 of 1.33 which is the 2019 June 7th exchange rate
9 which we used for our study, so Canadian
10 13.3 billion US, conservative estimate for the
11 scale of the illicit money laundering threat per
12 year in Canada, and we think about that in
13 distance and we think about that as the distance
14 from right where you are in Vancouver, the
15 Canada Place exhibition centre all the way
16 across the country it takes you -- you have to
17 zoom out a lot on Google Maps to get to the
18 parliament of Canada in Ottawa. So that's just
19 over 3 and a half thousand kilometres. If we
20 were just to think about okay, well, what are
21 the public sector resources from the
22 departmental results report, so it should be
23 pretty comprehensive on spending for enforcement
24 or prosecution efforts. This is the hard edge
25 of disruption. That's 17 million Canadian

1 dollars from the '18/19 report, or .13 percent
2 of the threat. Compared to that amount of the
3 threat which takes you all the way from Canada
4 Place in Vancouver all the way to the parliament
5 in Ottawa, the amount spent from public
6 resources on enforcement will get you to
7 Dickens, the neighbourhood down the road still
8 within Vancouver, 4 and a half kilometres. So
9 that's the -- you know, it gives you an idea of
10 the scale. If we think about all public sector
11 resources referred to in the departmental
12 resorts program, that includes all the HR spend
13 on FINTRAC and elsewhere, that gets you to the
14 Pattulo Bridge, 18.5 kilometres. If we think
15 about all the public sector resources and we
16 bring in all of the available information from
17 the pop funding, the booster funding from the
18 2019 budget and slice that up for the peak of
19 resources to Canadian agencies covering
20 everything, all the HR spend as well, that will
21 get you to Clayton, so that's 34.6 kilometres
22 away. So that is a long way away from the
23 distance to parliament in Ottawa.

24 Now, the good side is that there are
25 resources in the system. It's not as dire as

1 that kind of comparison would lead you to
2 believe because there's the private sector
3 spending, and the private sector if we turn it
4 into Canadian dollars at the same exchange rate,
5 6.8 billion Canadian dollars per year. So
6 that's about half of the estimate of the threat,
7 the very conservative estimate of the threat.
8 And so that will get you all the way to
9 Winnipeg, 1,800 kilometres away from the
10 Vancouver Canada Place exhibition centre.
11 That's where all the resources in the private
12 sector. But the challenge is that without
13 information sharing public/private and
14 private/private information sharing that
15 resource is effectively misspent, highly
16 ineffective in terms of how that resource is
17 resulting in material that is then used. Highly
18 inefficient and also very significant challenges
19 with regard to privacy because so much is
20 reported in Canada because of this defensive
21 reporting framework that exists.

22 So the vast majority of resources are not
23 being spent well in addressing that overall
24 threat, and the public sector resources, though
25 worthy of note about how much Canada has funded

1 individual agencies, particularly in the 2019
2 budget, you know, it just gives you a sense of
3 how small. When you drive to Clayton next -- I
4 don't know if that's a regular occurrence for
5 Vancouver citizens --

6 Q Currently we're not allowed to drive anywhere,
7 Mr. Maxwell.

8 A But that's how far it is.

9 Q Just to engage with that metaphor of distance
10 that you've used and the significance in terms
11 of information sharing, you've described a
12 distance between Vancouver and Ottawa as a sort
13 of a linear distance, but I gather what you're
14 saying is that if we're not information -- if
15 we're not sharing information or aligning or
16 being strategic about it, we may not be driving
17 in a straight line; we may be taking significant
18 detours or perhaps going in circles. Is that a
19 fair conclusion from what you've described?

20 A Well, I think it should emphasize just how large
21 the problem is. You know, and you recognize it
22 in the mandate for the Commission that money
23 laundering is flourishing. It's tremendous in
24 terms of the scale of financial crime. And then
25 we'll talk about it I'm sure in a moment, but if

1 you look at what the best information is about
2 what your government in Canada is achieving for
3 you with regards to the AML/ATF regime, you
4 know, insufficient doesn't really cut it in
5 terms of disrupting this huge amount of money
6 laundering and financial crime. You know,
7 obviously the commission exists, so there is
8 outrage there, but it should be a subject of
9 outrage that the impact is so small on economic
10 crime in Canada. And you know, another point of
11 outrage should be just how much is being spent
12 on -- from the private sector side and how
13 ineffective that regime is because of the lack
14 of information sharing. So if you're going to
15 make use of this \$6.8 billion Canadian which you
16 need to do to address this scale of crime, you
17 know, you need to address the effectiveness
18 challenges and understand those effectiveness
19 challenges.

20 Q Thank you. I think on a related issue to the
21 cost component that you're describing is
22 reporting the extent to which data has been
23 collected and reported through the system. But
24 perhaps we'll engage with that component of this
25 sort of big picture view of how well the system

1 is working in a moment. Just returning to your
2 addressing this strategic challenge number 1,
3 you go on to describe -- we're looking at
4 page 11 of your report. The next item is no
5 cross-government economic crime strategy exists
6 that identify system-wide shortcomings. Again,
7 can you just briefly explain what this factor is
8 and what its significance is and with respect to
9 the challenges you've described.

10 A Yes, what it really speaks to, the challenge in
11 Canada is obviously it's a very large country.
12 It's a federal and provincial divide in terms of
13 layers of government, multiple agencies. The
14 AML/ATF regime is complex in any case because it
15 provides so many different responsibilities on
16 different parties. So there's a real need for
17 coordination. Canada does well at supporting
18 cross-government dialogue, various operational
19 committees, often co-chaired by public safety
20 and Department of Finance. There is a lot of
21 activity which is aimed at bringing different
22 parts of government together and there's new
23 activity announced 2019, 2020. There's almost a
24 proliferation of initiatives which try and bring
25 stakeholders together. But the problem is that

1 this doesn't exist within a clear
2 cross-government economic crime strategy which
3 is directing all of that activity set within a
4 framework at which targets are set and
5 performances is measured. There have been some
6 great points that we should recognize, including
7 in June 13, in 2019 the joint special meeting of
8 federal, provincial, territorial finance
9 ministers and ministers responsible for AML to
10 agree to joint priorities. That's good. But
11 those joint priorities, you know, vague, you
12 could say. So there is a real need for clarity
13 on an economic crime strategy that can inform
14 this direction of this huge amount of resources
15 being spent in the private sector to achieve
16 something which the Canadian government wants it
17 to achieve and then measure if it's being
18 achieved, and that's missing.

19 There is a lot of hope expressed by the
20 interviewees that the ACE fusion team, this new
21 cross-government initiative spearheaded by
22 justice -- sorry, public safety, will contribute
23 to supporting a cross-government strategy, but
24 we are yet to see it.

25 Q Thank you. If we go now to the next page,

1 page 12, perhaps you can walk us through
2 these -- the next item you've identified is no
3 future target operating model. What are you
4 referring to there?

5 A So out of the strategy, which should include all
6 of those other themes that we spoke about at the
7 start which are outside of the purview of this
8 study, there should be a big section in the
9 strategy focused on information sharing. And
10 information sharing is not an end in itself.
11 It's a means. So based on the end that the
12 Canadian policymakers' leadership wish to
13 achieve with regard to disruption of crime, the
14 disruption of all of that crime, then there
15 should be a clear set of requirements,
16 information-sharing requirements that are needed
17 to achieve that flow of information that is
18 appropriate and responsive and timely. So that
19 would be what we describe as a target operating
20 model for public/private and private/private
21 financial information sharing, and that is
22 entirely absent in the Canadian regime save for
23 the recommendation in the parliamentary
24 statutory review report which says Canada should
25 adopt a JMLIT style partnership. So Canadian

1 government has said that's the roadmap for
2 reform. They have also said in their response
3 that they are favourable towards that policy
4 recommendation. That's as far as it goes.
5 There needs to be much more clarity about okay,
6 this is what we want to achieve in Canada, and
7 this is how information sharing should work to
8 achieve that. Again there's some hope that the
9 ACE Fusion Team will support that type of
10 function.

11 Q The next item you've identified is
12 cross-governmental national economic crime
13 threats are not identified nor are they
14 communicated to reporting entities in any
15 consistent manner to inform the allocation of
16 resources. Again, would you just explain what
17 that factor is and its significance.

18 A Yeah, so in Canada, again speaking to this
19 resource that gets you to Winnipeg compared to
20 Ottawa, it's a lot of resource but it's not
21 directed. So individual regulated entities,
22 reporting entities are required to identify risk
23 by themselves and to report everything from a
24 20 million suspicious transaction and in effect
25 put the same resources into a \$20 suspicious

1 transaction, and they must report those \$20
2 transactions and that does take time, resources
3 and people. So there's no effort to prioritize
4 the capabilities and the resources in reporting
5 entities from the perspective of government. So
6 one, there's no identification of national
7 economic crime threats as there is, for example,
8 in the UK or in the new US proposed rule making
9 makes it very clear that FinCEN wants reported
10 entities to prioritize based on national
11 economic crime threats because they want to see
12 expertise, processes developed in response to
13 those threats and they want to see action on
14 those threats.

15 That doesn't happen in Canada. Reporting
16 entities are adrift to report everything under
17 the sun and to not be aware of the priorities
18 that really make a difference to Canada.
19 Obviously that can be achieved through the
20 existing public/private partnership project
21 initiatives, and to a certain extent that's
22 helped. But from a broader perspective there
23 are no national economic crime threat priorities
24 in Canada and there is no consistent way in
25 which priorities are meant to steer the

1 resources in reporting entities.

2 Q We will touch on, I think, some regional
3 implications of this as well. But you mentioned
4 there's no national economic crime threats being
5 communicated to reporting entities. Are you
6 aware from a provincial perspective, as a
7 commission of inquiry looking at this challenge
8 from this province's perspective, are there
9 regional economic crime threats being
10 communicated, or is the same challenge present?
11 If you could explain that, please.

12 A Well, what came through on the interviews is
13 that reporting entities are scanning around for
14 signals of priorities and signals of threats of
15 interest. The good teams are doing that all the
16 time. So every speech that's made by the RCMP,
17 by FINTRAC, by political leadership, anything
18 coming out of the provinces, you know, they were
19 trying to get from that what they can. And of
20 course the project initiatives that Canada has
21 supported, which we detail the numerous project
22 initiatives on different threats which support a
23 strategic level of dialogue on a specific
24 threat. The specific threats that received
25 funding in the budgets and like human

1 trafficking, trade-based money laundering for
2 example. All of that provides a signal. And
3 even what has been reported in the media, though
4 it is a public issue of concern and where
5 arrests have been made, you know, the amount of
6 effort that reporting entities put into trying
7 to understand where there are signals of threat
8 prioritization is significant. But the problem
9 is that they're coming from everywhere and that
10 there is no national coordination over that
11 piece. So if, you know, for example, the
12 province of British Columbia was to state very
13 clearly over the next three years, these are the
14 provincial economic crime threats and we will be
15 very, very interested to understand what
16 provincial and federal stakeholders are doing on
17 a regular basis to address these threats and we
18 want to measure where we are now and we want to
19 measure performance over the period, that would
20 be helpful. That would definitely provide a
21 positive contribution. But the broader problem
22 that you'll have is that without a federal and a
23 cross-government approach to saying okay, we've
24 got multiple priority threats coming from maybe
25 just British Columbia, and you know, we have

1 other threats of interest. But without a
2 governance process for saying okay, well, out of
3 all of that, overall we want regulated entities
4 to focus on these issues and when we come round
5 to examine the regulated entities, the major
6 reporting entities at least, we'll be interested
7 to know what you've done in response to these
8 threats and how you've built up knowledge
9 expertise on these threats. If there was
10 tactical information sharing, how you supported
11 law enforcement tactically, how you have engaged
12 with law enforcement on these threats, how you
13 provided responsive timely information on these
14 threats. There is a limit to what the province
15 of British Columbia can do by itself. But by
16 stating priorities and saying that you are going
17 to hold people to account on the priorities, you
18 know, I am sure that will help, but you do also
19 need a federal process in Canada, particularly
20 follows through to the regulatory regime led by
21 FINTRAC, that is clear in saying that these
22 priorities make a difference when it comes to
23 regulatory examinations because ultimately these
24 are regulated entities and they're going to be
25 most afraid of what the supervisor says and what

1 attention on the importance of Canadians'
2 privacy and there's a desire to constrain the
3 process and constrain the role of FINTRAC in how
4 it can share information and how law enforcement
5 can be able to access reports of suspicion, for
6 example, and how regulated entities can receive
7 information from public agencies. So the whole
8 system, and most of the information sharing
9 requirements challenges are borne out of
10 perceived privacy concerns, has actually led to
11 a system where a tremendous amount of reporting
12 is generated to oblige the system and its
13 driving, as we say in the report, massive
14 volumes of reporting and one of the most
15 extensive AML/ATF data collection regimes in the
16 world. So, you know, in raw numbers this is --
17 it means if we look at the comparable reports or
18 actually reducing the number of reports we look
19 at that FINTRAC received, the STRs, the large
20 cash transaction reports and the electronic
21 funds transfer reports -- they receive others
22 but we'll focus on those -- Canada receives 31,
23 just over 31 million reports in the last
24 reporting year. So from FinCEN from the
25 comparable reporting, SARs and currency

1 transaction reports, they receive for the entire
2 jurisdiction of the US 21,600,000, so just shy
3 of 10 million more being reported in Canada, but
4 obviously if you include the other reports that
5 FINTRAC receive it's over 10 million. In the
6 UK, for example, which doesn't have a
7 cross-border reporting regime and it doesn't
8 have a currency transaction report or a large
9 cash transaction report like Canada and the US,
10 the annual reporting is just north of 500-, so
11 just south of 600,000 reports per year.

12 So what does that mean for Canadians? Well,
13 basically Canadian transactions are as I say
14 over 10 million more reported in Canada every
15 year compared to the US. Nearly 30 million more
16 reported every year to the Canadian FIU compared
17 to the UK. If we think about that per head of
18 population, 12.5 times more transaction reports
19 are filed every year in Canada compared to the
20 US per head of population. Compared to the UK
21 per head of population, 96 times more reports
22 are filed every year in Canada compared to the
23 UK.

24 So what this means is that the way you've
25 designed your system is driving defensive

1 reporting. There's a big reporting burden which
2 results in a really large cost in the private
3 sector, but you are not seeing the gain on
4 effectiveness in terms of disrupting financial
5 crime because of these broader information
6 sharing challenges. And you are left with a
7 system which is, as I say, one of the most
8 extensive with regards to data collection
9 sitting with FINTRAC and it's growing
10 exponentially. So the STRs to FINTRAC are
11 growing exponentially, increasing 64 percent
12 from the last year to the 2019/2020, the last
13 annual report with an average annual growth rate
14 of 37 percent. So this is growing tremendously.

15 Those who are, I suppose, proponents of this
16 regime would say FINTRAC is a guardian of
17 privacy and FINTRAC have a specific legal
18 responsibility and they have a -- they are the
19 only federal agency to have this requirement of
20 an audit from the privacy commission and they
21 are in some ways a kind of bastion or a guardian
22 of privacy. But it doesn't really cut it
23 because, you know, they are collecting all this
24 information, criticized by the privacy
25 commissioner in the audit report, referenced in

1 the statutory review report, which again is seen
2 by, reported by the Canadian government as being
3 the roadmap for reform. Where FINTRAC are
4 criticized for consistently less than 1 percent
5 of the volume of STR reports, so not even
6 counting the cross-border reports, but the STR
7 reports are less than 1 percent of those
8 resulting in terms of the numbers of
9 disclosures.

10 Now it may be that disclosures involve
11 multiple STR reports, but the last annual report
12 it's even -- you know, it's gone down, so it's
13 approximately .5 percent of STR inputs in terms
14 of the number of disclosures. So it's this
15 hugely disproportionate regime in terms of data
16 collection and the amount that's going to
17 through FINTRAC to law enforcement. FINTRAC is
18 collecting too much and the reason they are
19 collecting too much is because the regulatory
20 signals going out to industry are report,
21 report, report. If you're in doubt, report.
22 Defensive reporting is not a problem because we
23 are FINTRAC in regarding of privacy. And the
24 value going through to law enforcement is low
25 because of the time lag between reporting to

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

2 Q Mr. Maxwell, we were on page 12 of your report
3 just before the break. If we could go forward
4 please to page 13. This is a -- again you've
5 used a similar structure for each of the
6 different strategic challenges that you've
7 identified and just confirm, this is a portion
8 of your report where you have been, you're
9 highlighting international practices that are
10 relevant to those strategic challenges and some
11 of the lessons that we might draw from those
12 examples. Is that correct?

13 A Yes. That's correct. So related to the eight
14 themes, which multiple themes of enabling an
15 understanding on information sharing could
16 contribute to a strategic challenge, we place
17 international case studies of how other
18 countries have addressed that same challenge for
19 the benefit of thinking about, you know, what
20 might be appropriate for Canada.

21 Q And again as with other portions of your report,
22 I take it we'll find greater detail about these
23 examples in the annex; is that correct?

24 A Yes, and obviously Canada is a unique country
25 with unique circumstances, but what we try and

1 highlight is how comparable countries have
2 addressed that same challenge and provide some
3 details in relation to measuring the
4 effectiveness of the AML/ATF regime,
5 understanding economic crime threats and
6 developing a national economic crime strategy,
7 for example, prioritizing economic crime threats
8 at a cross-government level, all of which are
9 relevant to this first strategic challenge that
10 Canada is facing.

11 Q Thank you. That is sort of setting the table.
12 If you could walk us through the international
13 practices that are relevant that you have
14 identified here and what best practices you
15 might highlight from those international
16 comparative practices.

17 A Yes. So just on page 13 a few case studies
18 relate to the understanding of the effectiveness
19 and efficiency of the AML/ATF regime, and you
20 remember I cited the earlier study by Professor
21 Michael Levi and colleagues which really drew
22 attention to the fact that this type of data is
23 generally absent from jurisdictions' efforts to
24 manage their AML/ATF programs. FATF have
25 supported through their evaluation process

1 asking the tough questions and it's very often
2 through the FATF evaluation process that
3 countries work out okay, what do we actually
4 want to measure and therefore what do we want
5 to -- well, what do we want to achieve and what
6 do we want to measure? But some countries have
7 gone further than that and they've not just
8 responded to the FATF evaluation pressure, not
9 just scrambled together some information before
10 the FATF examination happens but established a
11 more regular rhythm on understanding the
12 effectiveness of their domestic regime. So the
13 US has an ongoing bank secrecy Value Project,
14 and that most recently supported a proposed
15 rule-making reform and they have just had major
16 legislative change through on the 1st of
17 January relevant to the AML system which was
18 kind of hidden within the defence bill, such is
19 the US system. But in the Netherlands in their
20 Joint Action Plan as a strategic approach to
21 tackling their particular money laundering
22 crisis, the Dutch government makes a strong
23 commitment to developing a policy framework
24 which is evaluated on a regular basis and so the
25 policy is risk oriented and can be adjusted over

1 time.

2 I think it's worth noting perhaps similar to
3 the context for the Commission, most countries
4 have spurred into action because they have had a
5 crisis or they've had a scandal with regards to
6 money laundering and perhaps that's the
7 unfortunate way in which policymaking is made
8 that it does need to respond to a public
9 scandal. But in Netherlands they've had a major
10 series of AML scandals affecting their major
11 banks and they've also had a tremendous growth
12 in the public awareness of a serious organized
13 crime threat with street-level assassinations of
14 lawyers in connection to a drug -- a serious
15 organized crime case. So it's common that there
16 is this kind of pretext of a crisis to force
17 governments into being proactive and then really
18 thinking about the process. We detail the UK
19 national economic crime plan and the elements
20 within that focused on the performance
21 framework. So the UK has developed a National
22 Serious and Organized Crime Performance
23 Framework supported by their home office and the
24 lead national enforcement agency, the National
25 Crime Agency, and specifically for the economic

1 crime plan the idea is to hold that plan to
2 account and continuously review seven key
3 questions. How comprehensive is our
4 understanding of economic crime threats and
5 vulnerabilities? How effectively are we
6 pursuing serious and organized criminals in the
7 UK online and overseas? How effectively are we
8 building resilience in public and private sector
9 against economic crime? How effectively are we
10 supporting those impacted by economic crime?
11 How effectively are we deterring people from the
12 involvement in economic crime? And how
13 effectively are we developing core capabilities
14 to address emerging threats? And finally how
15 effectively and efficiently are we managing our
16 resources, public and private, in countering
17 economic crime.

18 The UK established the first public/private
19 partnership in the format that we now understand
20 it, and that was borne out of the crisis of
21 repeated terrorist attacks in London in the
22 mid -- from 2015/2016 and the desire to support
23 a more effective response from financial
24 institutions. The US legislation obviously has
25 its roots in the post-9/11 environment.

1 So that's an unfortunate fact that you'll
2 see perhaps these best practices having their
3 roots in a crisis or a scandal.

4 Q Mr. Maxwell, I appreciate it's 133-page report,
5 and I appreciate I don't wish to put you through
6 the ordeal of going through every detail on it,
7 and here you've given a number of examples. I
8 might ask all of these examples that you've
9 highlighted here, are these ones where you might
10 recommend that we here draw lessons about how to
11 improve the degree of strategic awareness, the
12 strategic vision and the alignment into the AML
13 regime?

14 A Absolutely. I think those seven key questions,
15 performance questions in particular in the UK
16 box, you know, could apply to any jurisdiction.
17 I think in the absence of a government
18 proactively addressing these questions, in a
19 country such as Canada there may be a role for
20 concerned governments at a provincial level to
21 ask the same questions and to more regularly
22 understand performance because it's impacting
23 citizens at the provincial level and there is a
24 clear concern. So there's the FATF pressure,
25 but, you know, in the absence of government

1 regularly reviewing and understanding data and
2 effectiveness and efficiency maybe there is a
3 role for provincial stakeholders to hold those
4 feet to the fire and for those priority crimes
5 of interest to British Columbians, you know,
6 regularly asking for the data about how the
7 response is working and where the effectiveness
8 challenges are.

9 Q In relation to the strategic challenge the
10 jurisdictions that you've identified are the
11 United States, the Netherlands, the UK. Are
12 those sort of the countries that are currently
13 doing this, addressing this challenge most
14 effectively? Are there one of those that you
15 would perhaps highlight as leading the pack as
16 being perhaps one of the best practice
17 jurisdictions with respect to this strategic
18 challenge that you've identified?

19 A Yes. For this first strategic challenge it does
20 tend to be the US, the Netherlands and the UK
21 who are at the forefront of having a
22 cross-government strategy with a performance
23 management framework and in particular setting
24 priorities, which is a relatively new idea.
25 Canada, you know, will be in a reasonable

1 position to say that they are following the
2 historic international practice which is to just
3 outsource the understanding of priorities to
4 each individual regulated entity through what is
5 known as the risk-based approach, and the
6 risk-based approach obviously does provide a lot
7 of flexibility when a government doesn't
8 understand what threats perhaps are out there
9 and what interest they have. Then they just
10 want the regulated sector to discover the
11 unknown unknowns. But when you have known
12 unknowns, so known threats but an unknown, you
13 know, reports of the actual incidents of the
14 threats, then there is a place for priorities.
15 And the US has been particularly prominent in
16 establishing that type of framework or proposing
17 that type of framework, as has the UK through
18 it's National Economic Crime Centre and the
19 Dutch action plan, and then the cross-government
20 coordination has been evident in those three
21 jurisdictions.

22 Q Thank you. And if we could go forward now to
23 the second strategic challenge that you'd
24 identified, and that's on page 18 of the report.

25 A Yes. So this is all about insufficient

1 public/private financial information sharing to
2 detect money laundering. There has been
3 public/private information sharing through the
4 Canadian project initiatives, as they are
5 called, but this has been at a strategic level
6 and there is an absence of a tactical entity
7 level public/private information sharing legal
8 gateway in Canada for sharing tactical
9 information, and therefore there is a very large
10 impediment on the broader information-sharing
11 regime and for on the effectiveness of the
12 processes and the outcomes denying the regulated
13 entities the ability to be responsive to
14 tactical information of interest to Canadian
15 public authorities.

16 Q You describe it in the purple box at the top of
17 that page as creating "a low ceiling on
18 effectiveness." In your view is this limitation
19 of not being able to engage in tactical level
20 information sharing, is that something that just
21 creates a hard limit on how effective the regime
22 in Canada can be?

23 A Yes, absolutely. I think, you know, the
24 enforcement and FINTRAC staff work hard every
25 day to make the most out of the legal

1 environment that they have to disrupt crimes
2 which they are pursuing, but you know, a low
3 ceiling would be a polite way of framing it
4 because the Canadian regime is incapable of
5 supporting a realtime understanding of financial
6 crime as it's occurring to enforcement agencies.
7 There's significant time lag in disclosures
8 eventually getting through to enforcement
9 agencies, enforcement agencies' limitations on
10 being able to -- and FINTRAC's limitations on
11 being able to go back to the regulated entity to
12 ask for more information, we were interested in
13 what you said here, but we're also interested in
14 these accounts that are linked. So the
15 reporting is happening in the blind without
16 guidance from public agencies outside of their
17 strategic project initiatives, and therefore
18 Canada cannot achieve a realtime and responsive
19 use of the regulated community and those
20 30,000-plus reporting entities and that
21 \$5.1 billion US of spend is not being responsive
22 to tactical level interests from public
23 agencies.

24 Q Thank you. And I don't propose to take you
25 through every one of the factors here, but if we

1 go to the next page, page 19. So you note, I
2 think you averted to this earlier that at the
3 top here:

4 "Out of all countries with a
5 public/private financial information
6 sharing partnership approach, Canada is
7 the only common-law country that does not
8 allow public/private tactical-level
9 information sharing to support law
10 enforcement investigations."

11 Would you identify this as perhaps one of the
12 largest impediments to the current financial
13 information-sharing regime to combat financial
14 crime in Canada?

15 A Yes. So obviously a strategic vision is
16 strategic challenge number 1 because if you had
17 that strategic vision and political commitment
18 to address the challenges you would likely have
19 the follow-on results to support a legal gateway
20 for public/private and private/private
21 information sharing. The key thing is the
22 coherence between a policy ambition on privacy,
23 which is a really important area of public
24 policy, and tackling financial crime, which is
25 likewise an important area of public policy.

1 They are not necessarily in conflict. As I have
2 described, Canada has an opportunity to address
3 gains on privacy as well as effectiveness on
4 financial crime, such is the current situation.
5 But, you know, when it comes to what should
6 stakeholders do to support policy reform on
7 information sharing, the lack of a legal gateway
8 for tactical level information sharing is a
9 principal barrier to effectiveness. And from
10 our 2020 study Canada is the only common-law
11 jurisdiction that doesn't allow for that
12 public/private tactical level information
13 exchange through their partnership structures.
14 It's almost heroic what FINTRAC and the RCMP and
15 regulated entities have tried to do as best they
16 can within the existing legal framework to
17 support more effective outcomes, but I think as
18 we've highlighted in the study there has been a
19 lot of attention on the strategic level
20 information sharing partnerships and it's
21 probably reached a ceiling of what that can
22 achieve and can contribute to the Canadian
23 effectiveness.

24 Q The next two boxes here, on the same page,
25 relate to what appear to be related areas. You

1 say:

2 "At the FIU level, FINTRAC is unable to
3 share tactical information related to
4 their STR intelligence back to regulated
5 entities or to request followup
6 information from regulated entities on the
7 STRs filed."

8 And then you also go on in the next point to say
9 that:

10 "Viewed as a traditional intelligence
11 cycle, the AML/ATF regime is fundamentally
12 broken and built backwards, with law
13 enforcement and end users of AML
14 intelligence at least two steps removed
15 from collection."

16 You go on to describe some of the lack of
17 direction that results. Would you just explain
18 what these factors are, what their significance
19 is and elaborate on that slightly, please.

20 A Yes. So in law FINTRAC is prohibited from
21 requesting followup information from reporting
22 entities on a file that they have submitted, and
23 many, many jurisdictions allow their FIU to ask
24 for that followup information. So there's an
25 issue there. It's very often important to

1 request followup information because, as I say,
2 reporting entities report in the blind and they
3 may not be aware of everything that is important
4 to the public agencies.

5 The next comment is at a slightly more
6 fundamental level and there's a comment about it
7 being built backwards in terms of a traditional
8 intelligence cycle, is from the interviewees, an
9 interviewee statement that's recorded in the
10 relevant section. So anyone that's familiar
11 with an intelligence cycle knows that the
12 direction needs to inform the collection of
13 intelligence, and viewed as an intelligence
14 asset reporting entities are the collection arm.
15 So they are meant to report what's happening in
16 the real world and then it needs to be assessed,
17 generated into intelligence and understood by
18 the users, whether they are decision-makers or
19 operational stakeholders, and then that informs
20 further direction and further collection.

21 So there's no direction of collection in
22 this cycle. It's not a cycle. The reporting
23 entities stand there in isolation, not able to
24 speak to each other, not able to get insights,
25 tactical level insights from public agencies and

1 try to their best to look at their data and find
2 all crime as it might come through as money
3 laundering. And then they never hear anything
4 back. So it's a black box situation where the
5 reports are filed and they don't get any
6 feedback. So any system that doesn't have
7 feedback is unable to improve and that is why we
8 describe the system as fundamentally broken from
9 the perspective of an intelligence cycle and
10 it's certainly built backwards in terms of
11 direction happening within the individual
12 reporting entities in isolation and a lack of
13 any form of tactical direction.

14 Q From a regional perspective this what you
15 describe as the lack of broken intelligence
16 loop, the inability for feedback to be provided,
17 if prioritization or intelligence needs are
18 being -- are required at a local or regional
19 provincial level, what you're describing here
20 would suggest there isn't a -- that the
21 intelligence cycle isn't created in a way where
22 those sorts of needs could be communicated
23 through these current pathways back up to the
24 intelligence collection at least through the
25 reporting system. Is that accurate?

1 A Yes. So there's resource in the reporting
2 entities and there's a finite resource, and
3 absent any other direction they will work hard
4 to comply with whatever regulatory obligations
5 are put on them. Obviously some individuals are
6 complicit in money laundering, but they're
7 criminals and we'll kind of put them to one side
8 for a minute. And obviously they require
9 detection just like any other organized crime
10 group and just like any corrupt law enforcement
11 official. But, you know, fundamentally these
12 reporting entities are part of the AML/ATF
13 system, they are required to identify crime, so
14 if you don't assist them in that process then
15 they are going to be less effective. And when
16 crimes are priorities and you have particular
17 crimes of concern, money laundering issues of
18 concern in British Columbia and there isn't a
19 process for those priorities to inform the
20 collection process, at the strategic level we
21 talked about prioritization but at a tactical
22 level, your law enforcement officers who are
23 working on serious organized crime in
24 British Columbia should be able to understand
25 for intelligence purposes what the financial

1 intelligence AML/ATF system has in terms of
2 relevant information to their investigation.
3 That's the whole point of the AML/ATF regime,
4 that it provides useful information to law
5 enforcement. But your law enforcement officers
6 are not able to request any specific
7 information. They are not able to outside of a
8 production order for evidence where they must
9 already know that the financial institution
10 holds the account. They are not able to share
11 tactical information with specific financial
12 institutions or other reporting entities to
13 allow those reporting entities to be responsive
14 to the law enforcement collection requirements,
15 so that is why the flow of information is so
16 disjointed and ultimately the effectiveness and
17 challenges that we see in terms of the lack of
18 ability for the Canadian regime to demonstrate
19 effective results in a large part are due to
20 this lack of information sharing and lack of a
21 cycle that really is fit for purpose.

22 Q The last point -- factor you've identified here
23 is concerns that tempo and bandwidth of
24 public/private co-production and you indicate
25 that is low compared to similar foreign

1 jurisdictions. Could you explain just what you
2 mean by -- "tempo" I understand but perhaps
3 "bandwidth," if you would like to explain what
4 that means and also how we compare specifically
5 to other jurisdictions on those measures?

6 A Yeah. So the big champion projects from a
7 Canadian perspective and Canadian authorities
8 have done a good job about explaining what they
9 have achieved with public/private information
10 sharing at the strategic level through project
11 initiatives to international audiences and in
12 domestic media. But these project initiatives
13 while they are the champion of the regime as it
14 currently exists, you know, don't compare well
15 with other jurisdictions and their tempo of
16 production of strategic intelligence. It takes
17 roughly a year to produce any indicators
18 relevant to the threat of the project initiative
19 in Canada and there's a problem with bandwidth.
20 So because it again to comes back to the lack of
21 strategic underpinning to the regime and the
22 strategic vision and the strategic economic
23 crime disruption plan which has prioritization
24 within it, what came through in the interviews
25 is almost a fatigue of these co-production

1 initiatives, because Project Protect, the first
2 one, did gain a lot of notoriety and Canada
3 gained a lot of praise for it. There's been
4 this proliferation of project initiatives which,
5 in the words of one of the interviewees, don't
6 stop. They kind of keep going without any set
7 frame for when it should end, why it should end,
8 what it should achieve by when, and no one wants
9 to say okay, now we are going to stop this. So
10 because they keep growing, you know, there's a
11 bandwidth challenge for how regulated entities,
12 reporting entities can commit time and resources
13 to these initiatives. So by diluting the effort
14 across all of these project initiatives and all
15 of the cross-government coordination efforts
16 right now, it obviously inhibits the ability to
17 focus priorities and focus resources on
18 priorities.

19 Again the ACE Fusion Team, there was hope
20 expressed in the interviews that that initiative
21 would help bring a sense of coordination and
22 priorities to the various project initiatives,
23 but right now they can be accused of being
24 relatively slow to produce results. This
25 doesn't take away from the enormous effort

1 that's put in by the reporting entities, by
2 FINTRAC, by RCMP on these project initiatives
3 and the results they are having in terms of
4 disclosures, but those who are interested in
5 effectiveness, who I'm sure include all of the
6 individuals involved in those project
7 initiatives, can ask legitimate questions about
8 well, what has really happened with these
9 disclosures; how were they relevant to law
10 enforcement investigations; what happened in
11 terms of results and arrests and asset
12 restraint? And the interest is in this
13 challenge about lack of coordination between the
14 proliferation of project initiatives.

15 Q And if we go to the next page, page 20 again
16 this is as we saw before, this is where you are
17 pulling together relevant international
18 comparators and best practices in each of these
19 areas organized by your key teams; is that
20 right?

21 A Yes. So again relevant to public/private
22 financial information sharing, you know, it's
23 not difficult to find examples where there is a
24 tactical level legal gateway for public/private
25 information sharing because as I've mentioned

1 it's a relatively common feature of common law
2 approaches to public/private partnerships. So
3 we detail how some of those partnerships have
4 strengthened their legislative basis. It's
5 common for jurisdictions to start with a project
6 initiative or a public/private initiative of
7 some kind and then think okay, that was
8 interesting, we achieved a certain amount; now
9 we need to think about legislation that's fit
10 for purpose. What we highlight in the report
11 are those countries that have done that, so
12 worked from the initial pilot phase and then
13 developed legislation that's fit for purpose.
14 And Canada has yet to take that step beyond
15 their initial project initiatives, which don't
16 require a legal basis to move forward in. So
17 it's the baseline really of what a jurisdiction
18 should be doing on public/private information
19 sharing.

20 Q I think you also indicated earlier the volume,
21 the tempo of those initiatives is comparatively
22 quite slow.

23 A Yes, well, for instance in Germany in the year,
24 the very first year that they established their
25 public/private partnership they produced ten

1 risk indicator products from at a strategic
2 level, you know, which compares very favourably
3 to the Canadian output.

4 Q I take it you are not aware of any indication
5 that money launderers in Germany are less -- are
6 more creative of coming up with new methods and
7 new risk areas to exploit than those that may be
8 attacking the Canadian system.

9 A Well, there will certainly be overlap and we do
10 notice that public/private partnerships around
11 the world sometimes cover the same threat and
12 we're interested in the question about knowledge
13 exchanged between partnerships on those
14 strategic products, strategic intelligence. But
15 there should also be differences because, you
16 know, if we are interested in human trafficking
17 in Canada and we're interested in human
18 trafficking in Malaysia and the strategic nature
19 of the threat in those countries, there are
20 going to be differences because at the end of
21 the day there are different organized crime
22 groups who are operating in those jurisdictions.
23 Maybe there is a small level of crossover. But
24 they are going to have different
25 characteristics. You know, the Mafia in Italy

1 works in a slightly different way to Russian
2 organized crime, British organized crime. And
3 the trends should really kind of draw from the
4 intelligence of how criminals are operating in
5 that country on that threat. So you would
6 expect differences, but you would also expect
7 some similarities. There's not that much work
8 going on to really compare the public/private
9 partnership products at the moment, but
10 obviously we think there's an opportunity to do
11 that and maybe Canada can lead some of that
12 effort. We highlight all of the different
13 threats that have been addressed by partnerships
14 in our 2020 study, you know, perhaps using some
15 of those as a starting point and thinking okay,
16 well, what's the Canadian angle on this threat?
17 We understand what Germany or Singapore or
18 Australia have done, but we don't yet have a
19 threat typology on this topic; how is Canada
20 different? And, you know, using that as a
21 basis. And I am sure FINTRAC have done that,
22 but currently there aren't a large number of
23 threats covered in Canada through these typology
24 products.

25 Q If we can could we forward to page 23 of your

1 report. This is the portion of your report
2 where you are addressing the strategic challenge
3 three. There are four characteristics you've
4 identified here that contribute to this
5 challenge. So if you could explain, this is the
6 inadequate private to private information
7 sharing. What are the -- can you explain please
8 what those principal challenges are that were
9 identified.

10 A Yes, so in Canada there's a specific carve out
11 in PIPEDA for private/private sharing for the
12 suppression of fraud. I think it requires a bit
13 more investigation, but I think that when that
14 clause was brought in as a change to PIPEDA it
15 was slightly out the blue and happened during
16 the parliamentary process by someone in
17 parliament who was particularly interested in
18 fraud. So whether that -- you know, I think
19 that requires a little bit more research to dig
20 into. But Canada does have this carve out for
21 fraud, but it doesn't have the carve out for
22 money laundering. So that means that there's no
23 legal gateway to share information between
24 financial institutions for the prevention and
25 suppression of money laundering and to support

1 collaborative analytics between multiple
2 financial institutions as there is for fraud and
3 processes in place and also being developed for
4 private/private sharing in Canada to support the
5 suppression of fraud.

6 In Canada a regulated entity must have
7 knowledge that a crime is taking place to engage
8 in information sharing on private -- on money
9 laundering. So once you've reached knowledge
10 you're way past suspicion and once you've
11 reached suspicion you need to file. So there is
12 no incentive whatsoever in the Canadian regime
13 to collaborate across reporting entities in the
14 detection of money laundering.

15 Other countries have supported a legal
16 gateway for information sharing for fraud --
17 sorry, for money laundering, and typically this
18 supports more effective results in term of the
19 detection of money laundering. And I explained
20 at the start it's very common for serious and
21 organized crime in money laundering to spread
22 their accounts across multiple financial
23 institutions and to spread their money
24 laundering activity across multiple
25 institutions. So it's very difficult for an

1 individual reporting entity to have a good
2 understanding of the criminality and the money
3 laundering taking place because they have such a
4 small view on the underlying criminal activity
5 and they are not able to connect the dots. And
6 so if they do report that's a really patchy
7 level of understanding of suspicion that's going
8 through to FINTRAC and it's up to FINTRAC maybe
9 to piece together the pieces if the other
10 entities have all reported. So in the US,
11 314(b) of the *Patriot Act* allows regulated
12 entities to collaborate pre-suspicion and share
13 information for the pursuit of identifying
14 crime. Oddly enough they don't have the carve
15 out for fraud in the US, so it's the kind of
16 polar opposite federal legal environment. Just
17 one of those things.

18 But for money laundering they do have and
19 terrorist financing they do have the explicit
20 ability to do that through 314(b) of the *Patriot*
21 *Act*. And what you see is really interesting
22 invasion, so you see large technology platforms
23 being able to bring together entities to
24 collaborate on messages about okay, we've got a
25 little bit of concern about this transaction;

1 it's headed over to your institution; what do
2 you see? And they are able to say well, that's
3 very low risk from our perspective because of
4 association to other activity, or this can be
5 explained. So there is an opportunity to
6 resolve risk and on the other side there's an
7 opportunity to really understand broader
8 networks or rings of crime and have them
9 reported in a more comprehensive way to the FIU.
10 FinCEN go into length on their public-facing
11 material about how beneficial this is from their
12 perspective to receive comprehensive, more
13 networked understanding of suspicion, and the
14 largest retail banks in the US have now gone
15 together to co-locate analysts or to have
16 infrastructure that support analysts to be in
17 realtime dialogue and to co-develop on cases
18 relevant to serious organized crime to
19 understand the network and how it reaches
20 multiple financial institutions. That's really
21 important. Criminals are obviously one step
22 ahead they can play the game across multiple
23 borders, but that's outside of the purview of
24 this study and it's a harder nut to crack, but
25 at the very least within a domestic jurisdiction

1 to give the reporting entities a chance to
2 understand networks of crime they are the
3 private/private pre-suspicion information
4 sharing has been raised in the interviews as
5 being a really key condition for success.

6 Q I believe the term is safe harbour provisions.
7 Are you familiar with that term?

8 A Yes, that's correct. So the reporting entities
9 if they are sharing information in the pursuit
10 of generating a more comprehensive and more
11 ultimately effective report of suspicion through
12 to FINTRAC, which may also require updating the
13 regime to be a suspicious activity reporting
14 regime like the US and the UK rather than a
15 transaction regime which is really limited
16 amount of data. But that's a separate issue.
17 The safe harbour would protect reporting
18 entities from being sued by the subjects of that
19 information sharing. So protecting them from
20 civil liability, from civil action for having
21 engaged in that information sharing. And that's
22 really giving reporting entities the legal
23 comfort to engage in the activities that the
24 policymakers want to see happen to discover the
25 crime. And the problem is in Canada there

1 hasn't been the clarity that policymakers do
2 want reporting entities to engage in this
3 activity and want to resolve those issues in
4 terms of the inability to identify networks of
5 crime across multiple reporting entities.

6 Q You mentioned earlier that FINCEN had
7 communicated the value of the information that
8 it received through these processes, the
9 collaboration that can occur under a safe
10 harbour regime. In the interviews you conducted
11 of financial institutions in Canada was there a
12 perceived value or desire for similar safe
13 harbour provisions on the part of the financial
14 institutions? Did they feel that if they had
15 that -- they had that safe harbour that it would
16 facilitate them to share information which they
17 feel they currently cannot share?

18 A Yes. Absolutely. And this is new to reporting
19 entities in Canada. You know, it was very
20 common in the interviews to talk about the
21 importance of private/private sharing for money
22 laundering. There is a broad awareness of what
23 the legal challenge is. It's been communicated
24 to the federal government and there's an
25 understanding that the federal government very

1 clearly understand the issue as well, and I
2 believe the case was made in terms of PIPEDA
3 reform to introduce a carve-out similar to fraud
4 and the response has so far been very negative
5 towards that proposal, and I think there is a
6 specific document that I'm sure you have access
7 to which is the response from the minister of
8 innovation, science and economic development to
9 the chair of the standing committee on access to
10 information, privacy and ethics where this
11 specific issue was responded to, and the
12 response was basically quite negative about
13 specifics set to based carve-outs in PIPEDA. So
14 there's a general skepticism which came through
15 in the interviews that Canada will support a
16 carve-out through PIPEDA specifically for money
17 laundering information sharing as it exists for
18 fraud. You know, there's still obviously the
19 policy option, the political option to do that,
20 but there's a consensus that came across in the
21 interviews that the more effective route to do
22 that would be through a specific legal lawful
23 basis for information sharing through an
24 economic crime piece of legislation, an update
25 to the existing *PCMLTFA* legislation.

1 Q Thank you. We've already talked about some of
2 the international best practices in this area,
3 so I'd like to skip over that. If we go to
4 page 25, please, of the report. Here it's
5 strategic challenge 4, a system which
6 incentivizes firm-level risk management but
7 exacerbates system-wide vulnerability through
8 demarketing. You've already touched a little
9 bit on this I think in the introductory comments
10 you made before we went into the substance of
11 the report, but if you would just highlight the
12 key -- there are two factors you had identified
13 here. Just explain what factors in Canada
14 contribute to this challenge and how that is
15 manifested.

16 A Yeah. So because there is, you know, a very
17 significant limit on the law enforcement
18 disruption outcomes that we are currently seeing
19 associated to the AML/ATF regime or at least
20 recorded in a performance framework, the biggest
21 outcome that the whole system generates is
22 individual reporting entities demarketing a
23 customer once they reach an unacceptable level
24 of suspicion on that account. But that happens
25 without private/private sharing and without

1 public/private sharing. It happens
2 unilaterally. It happens in an uncoordinated
3 fashion and it creates a lot of system-wide
4 problems.

5 Now, this is a product with how FATF
6 designed the system back in the 1980s. So this
7 isn't necessarily something that is a stand-out
8 issue for Canada in the way that public/private
9 information sharing lack of legal gateway is.
10 But it's a big problem. And it was highlighted
11 in the interviews.

12 So there are system-wide vulnerabilities
13 created when an individual reporting entity
14 demarkets. It is a good result for the
15 reporting entity because they have identified
16 risk and they've expelled the risk and that is
17 what the regulation requires of them, but there
18 are two ways in which that can really cause harm
19 from a system-wide perspective. One is that it
20 may undermine the law enforcement investigation.
21 It doesn't necessarily help a law enforcement
22 investigation to lose sight of the suspicious
23 account holder. The system in part is designed
24 to, as I say, be an intelligence collection
25 process to report on criminality so that law

1 enforcement can act on it. If the account goes
2 somewhere it's out of view of law enforcement.

3 Now, when those demarketing decisions are
4 made the risky entity goes somewhere and it is
5 able according to the interviewees in our study
6 to regain access to the financial system in
7 Canada. So Canada is spending the vast amount
8 of its resources from the private sector
9 perspective, this 5.1 billion US estimate,
10 really leading to this activity of unilateral
11 account closures, but because the risky entities
12 aren't necessarily very much disrupted by that
13 action. And in fact one interviewee described
14 it as a learning experience for the money
15 launderer because they can understand oh, was it
16 that particular indicator or that particular
17 activity that spiked my account, my one account
18 out of hundreds of accounts that I have to be
19 closed? So it can be a learning experience; it
20 can actually build capacities of money
21 launderers, and in addition it displaces risk to
22 another reporting entity or another stakeholder
23 somewhere. And sooner or later that risky
24 entity is able to regain access to the financial
25 system and, as came through in the interviews,

1 very likely there was no disruption in services
2 for the money launderer because they maintain
3 multiple accounts across multiple financial
4 institutions.

5 So the biggest most common output of the
6 system where all the money is spent is not
7 providing a preventative or disruptive impact
8 and this issue of risk displacement is a more
9 challenging one because it is hardwired into the
10 FATF system. Basically a conflict between
11 whether the risky entity should be in the tent
12 or out of the tent, and that hasn't been
13 resolved at the FATF level, so it's difficult
14 for Canada to strike out by itself. But some
15 jurisdictions have addressed some of these
16 challenges and that's in one way by having a
17 keep open account process. So that's a formal
18 process whereby law enforcement can request an
19 account be kept open and that's basically saying
20 to the reporting entity, keep open this account;
21 we understand that you've identified suspicion,
22 but we are interested in receiving the reports
23 and we don't want you to close the account
24 because it would harm our investigation.

25 Now, some stakeholders and the interviewees

1 said well, we think that FINTRAC would support
2 us in that situation because FINTRAC would
3 understand when it came to an examination that
4 we were asked by law enforcement and we wouldn't
5 get a penalty. But others said no, there's a
6 real lack of clarity here and we are potentially
7 subject to civil action and other penalties, you
8 know, kind of either way, if we kept the account
9 open or not. So the lack of a legal framework
10 and a clear regulatory guidance and clear
11 guidance to the law enforcement agencies about
12 how to request for an account to be kept open is
13 a challenge in Canada and one that regulated
14 entities highlighted as one that should be
15 improved. It's possible to draw from the US
16 experience with regard to keep open. The
17 broader issue about uncoordinated account
18 closures is a more difficult one and it speaks
19 to the idea of well, do policymakers really want
20 a risky entity to be denied financial services?
21 Do they want a money launderer who has not been
22 charged or convicted with money laundering --
23 let's just assume they are a money launderer --
24 to be denied financial services?

25 Now, everything you'll kind of absorb from

1 the founding documents of the FATF and framework
2 and lots of speeches about tackling money
3 laundering you would come to the conclusion yes,
4 I think they do want to prevent access to the
5 financial system based on suspicion. And that's
6 why they are forcing each reporting entity to do
7 that process individually and demarket because
8 they don't want risky entities having financial
9 service and they're happy for that process to be
10 based on suspicion outside of a judicial
11 process. But when you say well, it's not
12 working and it's creating a lot of duplication
13 in cost and the risky entity is not being in any
14 way disrupted in a significant way and it needs
15 to be a more consistent process, that's where
16 there is a real lack of policy certainty because
17 it's not clear that in an advanced jurisdiction
18 democracy like Canada or the UK or Australia
19 that it is appropriate to deny someone financial
20 services consistently and comprehensively based
21 on suspicion alone.

22 So that's a real tension in the system and
23 it's one that hasn't been resolved yet at the
24 international level. It's probably quite a
25 stretch too far for Canada to really lead on

1 because obviously they are struggling with some
2 of the more basic parts of practice that has
3 been developed over the last five years.

4 Q If we go forward and you've already described
5 them, so I'm not going to take you through the
6 international practices that you referenced
7 here. They are set out at page 26. But if we
8 go forward to page 28 of your report, please,
9 there's what I might describe as a bit of a
10 waterfall diagram here titled "The
11 Interrelationship of Financial
12 Information-Sharing Themes." And I should note
13 on the preceding page you list the eight themes
14 that we've already -- the organizing themes that
15 we outlined and identified which we saw
16 reflected at each stage of your report.

17 Would you explain, please, for the
18 Commissioner what this diagram shows and what
19 the significance of the arrangement that you've
20 made here is, please.

21 A Yeah. So this really sets those eight enabling
22 themes, which are the way in which we've
23 structured the challenges that came through in
24 interviews in some kind of context about how
25 they conceptually relate to each other. So

1 financial intelligence collaboration to identify
2 and disrupt crime. Now, the system is a
3 public/private system but in Canada you have
4 these immense barriers for supporting
5 information sharing public/private and you have
6 various private/private sharing for money
7 laundering. So two big pillars. One is to
8 support public/private tactical financial
9 information sharing, and largely this will be
10 post-suspicion. It will enable reporting
11 entities that are selected by the process that
12 is appropriate for Canada -- likely it's to be
13 the largest reporting entities and stakeholders
14 who have been engaged in partnership activity
15 and can handle sensitive information to engage
16 in -- to receive information from public
17 agencies relevant to investigations. Now, that
18 requires a legal basis to do that. That is
19 going to drive intelligence on known threats
20 known to law enforcement. And they are going to
21 have a set of suspects for an organized crime
22 case and they're going to get more intelligence
23 on their financial behaviour which hopefully
24 should support some disruption action in their
25 prosecutions, arrests, asset recovery. That's

1 going to require an orientation towards law
2 enforcement activities which the system doesn't
3 really have right now. FINTRAC do very -- you
4 know, work hard to be as responsive as possible
5 to law enforcement activity, but because they
6 are one step removed from the reporting entities
7 and there's no tactical level dialogue from the
8 users of intelligence back to the reporting
9 entities there isn't that orientation towards
10 law enforcement outputs. So that's all on known
11 threats, or known unknowns.

12 Now, enhancing private sector capacity to
13 detect crime is going to be about pre-suspicion
14 private/private sharing largely. So that is
15 allowing a network to defeat a network. There's
16 networks of organized crime who are fantastic at
17 collaborating, they're fantastic at sharing
18 information and they absolutely spread their
19 risk across multitime reporting entities. By
20 establishing a clear legal basis for
21 private/private sharing to detect money
22 laundering between reporting entities, voluntary
23 basis as exists in the States it's the most
24 advanced legislative regime for this type of
25 sharing. It's going to support reporting

1 entities and identify unknown threats to law
2 enforcement. So the criminality they are not
3 already tracking, the suspects they don't
4 already know about. And we see the data from
5 that where it's possible, the additional
6 activity which is made known to law enforcement
7 agencies.

8 It also should support a more effective
9 preventive function, which is a huge pillar of
10 what the system should be achieving. And that
11 should be supported by this kind of strategic
12 dialogue high-capacity production of strategic
13 intelligence.

14 Now, moving into prevention, prevention is
15 tough. You'll hear a lot of speeches from law
16 enforcement stakeholders who say, we can't
17 prosecute our way out of this problem because
18 it's too big, so we need to prevent. And so
19 there is an emphasis on the need for prevention,
20 but as we talked about just in the last section
21 most of the effort that is put into unilateral
22 account closures is not supporting a
23 preventative credible set of outcomes.

24 So we put into supporting a system-wide
25 prevention effort attention to mitigate risk

1 displacement, a streamlined process for keep
2 open requests under appropriate governance, and
3 we also raised post-suspicion information
4 sharing, which would be similar to fraud and
5 cyber post-suspicion information sharing. When
6 a fraud attack has happened that information is
7 shared so that others are protected from that
8 fraud and why is that not happening for money
9 laundering threats.

10 And then finally we raised supervisor
11 issues. So a supervisor should be responsible
12 in their regulatory approach, in their pressure
13 that they put on reporting entities through
14 examinations and other communication
15 incentivizing effective and efficient activity
16 which contributes to positive systemic outcomes.
17 Right now we have a supervisory system reported
18 from the interviewees, reported by the private
19 sector which is not supporting by virtue of the
20 legal regime effective dialogue for tactical
21 level information sharing and for any hope of
22 realtime disruption of financial crime of
23 interest to law enforcement investigations, and
24 we are not supporting through the regulatory
25 regime an effective prevention effort. So real

1 challenges and that's even independent from the
2 data collection piece that the current system is
3 driving a very high data collection footprint on
4 Canadian society.

5 Q Thank you. If we go to the final portion of the
6 overview component of your report on page 29.
7 There's a section entitled "Opportunities to
8 Enhance the Canadian Framework." I take it
9 these are your specific recommendations or
10 identification of areas where in respect of each
11 of those themes that you have identified and
12 we've gone through you have identified specific
13 areas where there is an opportunity to enhance
14 what exists currently. Is that how this report,
15 this portion of --

16 A Yes. That's correct. You know, the logic as I
17 explained at the start is defining the challenge
18 from the perspective of reporting entities,
19 framing that within a structure, understanding
20 the broader activity relevant in the Canadian
21 framework, highlighting international case
22 studies which are relevant to those same
23 challenges and then just drawing from what those
24 international practices have demonstrated
25 suggest issues for Canadian stakeholders to

1 consider. And bear in mind obviously, you know,
2 there is a lot of activity happening at the
3 federal level, provincial level which is
4 detailed we haven't had time to fully go
5 through. So the fact that the challenges still
6 exist doesn't take away from the tremendous
7 effort that has been applied by public agencies
8 in particular but also reporting entities in
9 Canada. And bear in mind it's reporting
10 entities that really drove the whole idea of the
11 strategic project initiatives to support
12 information sharing and later public agencies
13 joined that. So reporting entities have really
14 pushed to achieve better results for Canadian
15 society through the AML/ATF regime within the
16 restrictions they have. But drawing from these
17 international case studies, you know, relatively
18 straightforward recommendations that to support
19 more effective understanding of efficiency and
20 effectiveness of the AML/ATF system that there
21 should be a more comprehensive performance
22 management framework. FINTRAC have absolutely
23 done their best within their own activity. The
24 problem is that we're not getting
25 cross-government reporting. Where we do have it

1 it's on activity and it doesn't really include
2 for instance provincial law enforcement, doesn't
3 really include the four public safety elements
4 who are ultimately responsible for the lion's
5 share of criminal justice outcomes or
6 investigations in arrests. So cross-government
7 reporting on outcomes-based activity. Let's
8 move away from or expand from activity-based
9 reporting to outcomes. Canada has done a great
10 job at activity-based reporting. We suggest
11 that production of an economic crime disruption
12 annual report which could usefully bring
13 together that data on an annual basis driven by
14 Canadian interests, driven by Canadian
15 priorities for a Canadian purpose rather than
16 the system being responsive only to FATF
17 evaluations, parliamentary pressure. You know,
18 the government driving the agenda that they want
19 to see in terms of crime disruption and
20 monitoring effectiveness. We suggest some more
21 minor points that could improve effectiveness
22 there.

23 Q Well, Mr. Maxwell, appreciating in terms of
24 highlighting some of these, if we go -- I'd like
25 to ask some specific questions that may relate

1 to areas where a province might engage for
2 consideration, and on page 30 if we turn the
3 highlight under "Prioritization of Economic
4 Crime Threats." Some of these I think we did
5 touch on already what opportunities or
6 challenges might exist if there isn't an ability
7 for law enforcement or if there is a general
8 challenge in expressing priorities in the
9 collection of intelligence, the reporting of
10 intelligence and a general unresponsiveness.
11 One of the areas I'm going to ask is what in
12 your opinion would be the potential for a region
13 or a province to establish it's own information
14 sharing partnership framework at a sub-national
15 level potentially with a reporting collection
16 and disclosure occurring at that sub-national
17 level? Are there risks associated with that?
18 Is that something that you've seen before? Are
19 there -- is that something that you have a
20 perspective on?

21 A Yes. So it came through in the interview, you
22 know, some stakeholders raised a concern that
23 there might be the growth of different
24 regulatory regimes or in some ways an
25 uncoordinated approach between provincial

1 priorities which might affect regulatory
2 obligations and the federal approach to
3 regulations, so a desire to have one system in
4 Canada on AML/ATF supervision that works well
5 rather than a proliferation of regulatory
6 obligations which would increase cost but not
7 necessarily effectiveness. That said, the
8 opportunity and some of the partnership activity
9 in Canada has been had its roots very much in a
10 provincial basis, in particular Project Athena,
11 which I'm sure you've covered in more detail in
12 a specific hearing but has now grown into a
13 broader effort by the RCMP, led by the RCMP in
14 collaboration across government to connect
15 provincial threat priorities with a federal
16 process for thinking about threats so that there
17 is good dialogue there and that it can be
18 communicated in a more effective way to
19 reporting entities.

20 That clearly has a lot of promise because
21 ultimately the crimes are taking place
22 somewhere. They don't -- you know, crimes don't
23 take place at the federal level. They take
24 place at someone's door and obviously there are
25 national level organized crime rings which might

1 be beyond the capabilities of a province and of
2 course there's international crime which even a
3 national authority might struggle with, but you
4 know, a lot of crimes are hitting victims in a
5 certain place and you know, therefore, it's very
6 conceivable that a province like
7 British Columbia has slightly different
8 priorities because of a slightly different
9 criminal footprint than another province. A
10 different economy, a different opportunity for
11 crime, a different sophistication of crime and
12 therefore there should be a tailored approach
13 for tackling crime, which of course there would
14 be from a traditional law enforcement
15 perspective, but how can that prioritization of
16 threats of interest to British Columbia be
17 communicated in a way that has relevance to
18 reporting entities. I think that's a real
19 opportunity.

20 The US has a lot of public/private
21 initiatives which are at a state levels, so
22 sub-federal level, which may provide some
23 confidence for the future if Canada did have in
24 particular a tactical level legal gateway for
25 information sharing, that you might wish to

1 establish a specific tactical exchange for
2 tactical information of interest for crimes
3 happening in British Columbia. So
4 prioritization signals and particularly where
5 there was a tactical information-sharing
6 opportunity to have that tactical exchange, a
7 forum for doing that relevant to crimes in
8 British Columbia, for example, could prove very
9 valuable to British Columbia. And the example
10 in the States where they do have the legal
11 gateway both for public/private and
12 private/private sharing there's a lot of
13 partnership activity at a state level.

14 Q And you mentioned Project Athena. And I
15 anticipate that some of the evidence our inquiry
16 may hear about that project is that as a
17 regional information sharing initiative is that
18 there may have been some early challenges
19 perhaps with entities that participated in it to
20 the extent it wasn't necessarily coming from an
21 expected channel or coming from a regional
22 branch of the RCMP not necessarily having the
23 red telephone on the desk to the leadership of
24 the major financial institutions or otherwise.
25 On that point when we look at jurisdictions that

1 have sort of a coordinating body and established
2 information sharing partnership prioritization
3 body like JMLIT, like the FinCEN alliance, is
4 that one potential advantage of a model like
5 that is that you have essentially one trusted
6 entity that is coordinating, prioritizing and
7 liaising with potential partners as part of an
8 initiative and allowing that sort of -- you
9 know, the trust already exists to facilitate the
10 relationship?

11 A Yes, absolutely. So it speaks to the idea of
12 prioritization and the cross-government
13 strategic for tackling economic crime and from
14 our interview comments a challenge that Canada
15 has a kind of uncoordinated approach to
16 establishing these partnerships. They are very
17 often driven by individuals, which has been a
18 strength that has been communicated by the
19 Canadian agencies when presenting these projects
20 and no doubt it's very impressive that some
21 individuals have gone above and beyond their
22 regulatory requirements and they have had a
23 passion for addressing a certain crime and they
24 worked hard to bring together colleagues to talk
25 about what they could do, and if you -- I'm sure

1 everyone is very familiar with Project Protect,
2 but it basically arose from a conference where
3 someone was inspired by a story of a human
4 trafficking survivor and the idea came from the
5 reporting entities to come together and do
6 something about it.

7 So while that's inspiring and, you know, not
8 taking away in any way from that, Canada is a
9 system dominated by passion projects. So you
10 have personal commitment by individuals which
11 may wane when perhaps they retire or move to a
12 different line of work or a different
13 institution. It's driven by individuals and it
14 doesn't fit within a national approach for
15 prioritization. From the interviews
16 stakeholders speak to the bandwidth problem of
17 servicing all of these partnerships, and you
18 know the problem -- reputational problem and
19 resource problem, potentially a regulatory
20 problem if they don't commit to every single
21 partnership. But there is a limit to the
22 resources they have and, you know, you can only
23 do much well. So to be effective obviously you
24 have to prioritize resources. And, you know,
25 inevitably with prioritization some topics will

1 partnership as you begin to expand the tent
2 beyond large sophisticated financial
3 institutions and the major governmental bodies?
4 A Yes. So in our broader studies that we talked
5 about at the start we looked at some of the
6 conditions for success in startup of a
7 partnership and then we had another study which
8 was about conditions relevant to the growth of
9 partnerships, and they both included a number of
10 workshops in different countries and interview
11 series. And a key issue obviously is trust and
12 confidence between the partnerships, between the
13 partner members, and you know, the larger the
14 membership obviously there's challenges not just
15 in trust but in information security standards
16 and how those are assured and when there is a
17 transfer of sensitive information the guarantees
18 and how that information is handled and that
19 there's no unauthorized leaks. And obviously
20 sensitive information being exchanged within
21 these partnerships, it's a target. It's a
22 target for cyber attack. It's a target for
23 infiltration by organized crime. For some of
24 the high-end stuff it's a target for state
25 infiltration by non-friendly states. So there

1 is always going to be a risk of compromise just
2 as there would be for your traditional public
3 sector agencies, and the broader intent perhaps
4 the less able there is to be -- have a
5 meaningful dialogue on sensitive information.

6 So I think partnerships for partnership sake
7 isn't probably the way to go. But from the
8 experience of partnerships so far where there is
9 a clear set of objectives, the membership can be
10 defined based on the relevance to those
11 objectives. Now, it's very likely that you are
12 going to have crime threats of interest in
13 British Columbia which require the engagement of
14 non-traditional actors potentially outside of
15 the regulated community, and at a strategic
16 level obviously ideally it should take place
17 within a broader national coordination effort
18 which links to the regulatory regime for
19 reporting entities. That's absolutely a key.
20 But for instance, with human trafficking one of
21 the strengths of the JMLIT expert working group
22 is they encourage the participation of Airbnb,
23 who were happy to contribute and, you know, had
24 some insights in terms of their understanding of
25 risk that some of their Airbnbs were being used

1 for exploitation of individuals.

2 So you know, it's not just that traditional
3 regulated community. I think there is a broader
4 change which is happening in society about the
5 responsibility of business to play their part in
6 disrupting crime, and you see that particularly
7 with social media companies at the kind of
8 national, international level, particularly in
9 the US. But there's no reason why for a crime
10 where certain a sector is of interest in
11 British Columbia that is it shouldn't be
12 possible to have a dialogue, a public/private
13 dialogue with them to understand their
14 contribution to detecting and disrupting that
15 crime. Notwithstanding all the points that
16 we've previously talked about about coordination
17 and proliferation of partnerships in Canada.

18 MR. ISAAC: And perhaps just looking at the time,
19 Mr. Commissioner, I'll let you know that I
20 anticipate I have approximately ten more minutes
21 of questions. There are 45 minutes of questions
22 that participants have requested so that should
23 have us ending on time.

24 Q Mr. Maxwell, I would like to turn, you've
25 referred to this a couple of times early on in

1 your evidence about privacy enhancing
2 technologies and privacy for preserving
3 analysis, and I understand you and FFIS have
4 published several papers and there's research
5 ongoing on that. And I don't intend to take you
6 through the intricate details of the
7 technologies involved, but if we could, Madam
8 Registrar, there are two reports. One was
9 circulated earlier at tab 5. This is a
10 June 2020 paper.

11 A If you just go to the next page. Yeah, I mean
12 there is a January 2021 version of this.

13 Q Yes, that's what -- I'll bring up that next
14 section because that's what I'd like to look at
15 briefly. But if we could bring up also the
16 document at tab 2. But you recognize that first
17 report as the June 2020 report; is that right?

18 A Yes, I do.

19 Q Okay. And then we should I think have the
20 January 2021. Can you see that now?

21 A Yes, I do.

22 MR. ISAAC: If we could have those marked please as
23 the next two exhibits.

24 THE COMMISSIONER: 412 and 413.

25 THE REGISTRAR: Exhibit 412 and 413.

1 **EXHIBIT 412: FFIS, Case Studies of the Use of**
2 **Privacy Preserving Analysis - June 2020 Version**
3 **EXHIBIT 413: FFIS, Case Studies of the Use of**
4 **Privacy Preserving Analysis - January 2021**

5 MR. ISAAC: Thank you.

6 Q Mr. Maxwell, if you would please explain what
7 privacy enhancing preserving analytics and
8 technologies are and what their potential
9 significance is to tackling financial crime and
10 what these studies and reports that you've been
11 engaged in have considered in that regard.

12 A Very happy to. So this broader field doesn't
13 have a fantastic taxonomy, so some of the terms
14 are still disputed, but I will describe how
15 we've used the terminology. So we talk about
16 privacy preserving analysis to tackle financial
17 crime and in reference to the use of certain
18 privacy enhancing technologies which have
19 certain characteristics. Now, privacy enhancing
20 technology is quite a large field and would
21 include consumer technology such as virtual
22 private networks, which I'm sure some of your
23 viewers are watching this webcast on, through to
24 what we are talking about in this study. So in
25 this study we are referring to an advanced set

1 of techniques, encryption techniques which have
2 certain characteristics, and the principal issue
3 that we are interested in is the use of privacy
4 enhancing technology which allows a single
5 institution across their business but we're
6 particularly interested in multiple institutions
7 being able to collaborate on an information
8 sharing exercise, and the advantage of these
9 technologies is that it removes the requirement
10 to share the underlying raw data in order to
11 have a computational collaboration.

12 Now, the language, the English language
13 isn't fantastic at describing some of this
14 exchange because it's a field of technology
15 which challenges some of the ways in which we
16 think things are possible. So we use a metaphor
17 just in the opening page of our website that
18 covers this project where imagine you have a
19 safe and you know that safe has some important
20 information in it, but you want a kind of
21 summary report from that important information.
22 It could be 20 files on individuals and it's got
23 lots of information about them, but you just
24 want to find out what's the average age of the
25 individuals.

1 Now, in the past you would have to open the
2 safe, decrypt the data, take it out, read every
3 one, record it, analyze it, compute and put the
4 information back in the safe. That's the
5 traditional way of analysis to -- analyzing in
6 the clear. So you have to decrypt the data to
7 analyze.

8 What privacy preserving analytics offers is
9 the opportunity to get the result without
10 opening the safe, and what's more you can do
11 that across multiple safes with multiple
12 institutions. So they don't need to share the
13 raw data. The raw data remains undisclosed and
14 for some of the techniques unencrypted and the
15 output of the computation can be revealed. So
16 it gives you much more control about what
17 information you share and what information you
18 remain undisclosed -- you ensure is undisclosed
19 in the process.

20 So it's really different. We are familiar
21 with encryption of data in storage; everyone is
22 familiar with that. We are familiar with
23 encryption of data in transit; I'm sure everyone
24 is familiar with an encrypted email. But we are
25 not familiar with the idea of encryption of data

1 in use, and that's what privacy preserving
2 analytics is. Now, it's matured over the last
3 decade or so, and you know, we are seeing
4 real-world applications of this technology which
5 previously was just too computationally
6 expensive and the techniques were too
7 inefficient to really have commercial
8 application. But we are now seeing real world
9 application in healthcare where there's
10 obviously lots of sensitive data and the desire
11 to collaborate on analytical exercises. We are
12 seeing it used in national security. Obviously
13 they tend to be first in exploiting new
14 technology. And in this study we map how the
15 techniques are being used by the financial
16 community and in some cases public agencies to
17 support information sharing relevant to the
18 detection of financial crime. So it's being
19 used in a number of ways. In some jurisdictions
20 or in some projects that we cover the focus is
21 on making sure that the query is private, so
22 that a querying entity or requesting entity for
23 information doesn't have to reveal the request
24 to the data owner, and the data owner provides
25 the response without ever knowing what the

1 request was or even knowing what they sent. So
2 that has certain applications. And, you know,
3 other use is for you to understand your one
4 project is related to know your customer checks,
5 which is kind of some of the basics of the AML
6 regime, and the idea was for multiple financial
7 institutions to be able to reference or check
8 their client data against a community of their
9 peers.

10 Now, at no point were they sharing any
11 details about their customer. None of the other
12 participants could discover who their customer
13 was or any personal identifying information
14 about their customer, but what they received was
15 a score about whether their client reference
16 data matched. There was a certain unique code,
17 I think it was a text reference linking the
18 clients, and then if their address matched or
19 their telephone number matched. This can be
20 very helpful because financial institutions are
21 required to understand if some of their
22 information is out of date or inaccurate so it
23 can support their process for triage to follow
24 up on trying to find out whether they have
25 inaccurate information about their client.

1 So it's quite a complex field of encryption
2 and financial institutions are just at this
3 phase of running projects, running pilots to see
4 how the technology is relevant to their use
5 cases, but it's quite an interesting field for
6 anti-money laundering where there is a real
7 emphasis, a real need to share information to
8 understand risk, but there is also obviously
9 privacy restrictions which in some cases bump up
10 against that requirement from an AML
11 perspective.

12 So some people view the field as providing
13 tremendous promise to enable analytical sharing
14 while still protecting the underlying customer
15 data. Australia probably from a public sector
16 side are leading this effort through their
17 public/private partnership, the Fintel Alliance
18 through AUSTRAC, their FIU, and they are running
19 a project called the Alerting Project whereby
20 through a privacy preserving technique they
21 would be able to understand the realtime
22 financial footprint of a specific subject of
23 interest or personal identifying information
24 relevant to, you know, serious nationally
25 relevant organized crime and have that query

1 sent out to financial institutions without the
2 financial institutions potentially knowing about
3 the details of that query and to receive the
4 intelligence direct.

5 So, you know, it's still an emerging field,
6 obviously, and that's where we are so interested
7 in it and it raises lots of interesting
8 technical, legal policy questions and so that is
9 fertile ground for us to investigate those
10 issues from a think-tank perspective.

11 Q Two questions. I'll blend them together in the
12 interest of time, but feel free to pick them off
13 in the order you choose. First, Canada has a
14 high concentration of the financial sector among
15 a very small number of large national banks.
16 I'm wondering whether or not that feature as
17 opposed to a more fragmented environment for
18 example in the United States with many more
19 banks might be more fertile ground for this sort
20 of technology. And then the second question is
21 what could British Columbia do to support
22 innovation around this potential technology and
23 its implementation.

24 A Yeah, so an example in the States is their use
25 of 314(a) which is their public/private

1 information or one of their public/private
2 information-sharing legal gateways to share
3 sensitive information. Now, they share that
4 through an encrypted email process, but from the
5 perspective of this technology we might refer to
6 that as sharing in the clear. So someone in the
7 bank receives the information and it has the
8 identifying information of the subject that
9 they've shared. They share that information out
10 to 36,000 individuals across that are registered
11 to receive 314(a). So that's a lot of people
12 receiving sensitive information and because of
13 that it's been criticized that it only really
14 gets used at the end of the process. So once
15 the law enforcement either have the guy arrested
16 or they are just about to kick in the door, they
17 might file one of these things to see what else
18 is out there that might be useful to the case
19 rather than being part of the intelligence
20 detection process that really drives the
21 intelligence understanding of the serious and
22 organized crime group because they don't want to
23 share that information at that scale to that
24 many institutions. In Canada because of the
25 your concentration of banking there is a real

1 opportunity one, to share information in the
2 clear and have a much higher confidence that you
3 are going to cover a much larger degree of the
4 economy by sharing with a smaller number of
5 financial institutions. That's one. But then
6 on this technology to be able to collaborate in
7 a way which perhaps reveals a much more
8 comprehensive intelligence picture about a
9 smaller set of individuals who are of specific
10 interest to your law enforcement investigators
11 and receive that in a privacy preserving way
12 such that the regulated entities don't
13 necessarily have all the information about the
14 subject.

15 Now, that is probably some way off because
16 there are lots of data interruptability issues
17 at play, but Canadian financial institutions on
18 public record are currently exploring the use of
19 privacy enhancing technology for their own KYC
20 and AML purposes certainly within financial
21 institutions, Canadian financial institutions,
22 and they are looking at what the use is
23 cross-border.

24 So it is a useful topic for Canada to be
25 exploring, one because there is a big emphasis

1 obviously in Canadian debate and the policy on
2 privacy and the link to financial crime, and so
3 Canada should be at the forefront of exploring
4 okay, well, how can we support better outcomes
5 whilst providing a high level of confidence in
6 terms of protections and reducing privacy
7 intrusions? And this technology, field of
8 technology, may assist. Now, you have a
9 challenge which has surfaced in the interviews
10 and reported in the survey in Canada that in
11 general is felt not to be a spirit of compromise
12 between achieving a coherent balance between
13 financial crime objectives and privacy
14 objectives. Those areas of government aren't
15 seeking compromise in the way that's
16 satisfactory to both currently on the perception
17 of the interviewees.

18 Now, by bringing people around and thinking
19 about okay, well, how does this technology
20 alleviate some of the challenges from a privacy
21 perspective but support some of the desired
22 outcomes from a financial crime perspective,
23 British Columbia could potentially support some
24 of that debate. Obviously British Columbia
25 supports economic growth and innovation in lots

1 of ways, but there's nothing to stop
2 British Columbia, you know, convening
3 discussion, encouraging discussion, trying to
4 understand what the opportunities are to use
5 this technology and support more effective
6 outcomes both for privacy and financial crime.

7 MR. ISAAC: Thank you, Mr. Maxwell. I just want to
8 be clear before -- that was my last question. I
9 just want to confirm. I wasn't clear about it,
10 but there were two reports. I think the
11 June 2020 one if that could be the exhibit 412
12 and then the January 2021 report be exhibit 413.

13 THE COMMISSIONER: That's fine.

14 THE REGISTRAR: Yes. I can confirm that.

15 MR. ISAAC: Thank you very much. Those are my
16 questions, Mr. Commissioner.

17 THE COMMISSIONER: Thank you, Mr. Isaac. I'll now
18 call on Ms. Friesen on behalf of the province
19 who has been allocated 15 minutes.

20 MS. FRIESEN: Thank you, Mr. Commissioner. I no
21 longer have any questions for this witness.

22 THE COMMISSIONER: Thank you, Ms. Friesen.
23 Ms. Magonet for the British Columbia Civil
24 Liberties Association who has been allocated
25 15 minutes.

1 MS. MAGONET: Thank you, Mr. Commissioner.

2 **EXAMINATION BY MS. MAGONET:**

3 Q Mr. Maxwell, can you hear me?

4 A Yes, I can.

5 Q Excellent. Thank you. My first question
6 relates to the theme you discussed during your
7 evidence today which is the data collection
8 footprint of Canada's anti-money laundering
9 regime. Is it your position that FINTRAC should
10 be collecting less data, that the regime should
11 be modified to be more targeted?

12 A Well, that's not what we say in this study. We
13 kind of raise the challenge that Canada, you
14 know, appears to be under delivering on all
15 those fronts, on effectiveness, on economic
16 crime, on efficiency in terms of the resources
17 applied to the system, public and private, and
18 on data protection. And it's an irony really
19 that Canada's regime is justified on the basis
20 of privacy to explain the effectiveness but
21 actually is resulting in this massive data
22 collection footprint on Canadian society. So we
23 raised that as a core challenge to the current
24 regime.

25 Now, there's a number of ways that

1 stakeholders might wish to address that,
2 stakeholders meaning political leadership and
3 policy decision-makers as well as relevant
4 stakeholders in society. So it's entirely
5 plausible that the Canadian regime could have
6 less reports filed to FINTRAC and be more
7 effective in financial crime results. By having
8 a more responsive reporting regime to
9 investigative interest through public/private
10 tactical level information sharing, it's
11 entirely plausible that Canada could reduce from
12 this very, very high level of reporting received
13 and have more relevant, more useful information
14 to law enforcement to act on. So that's one
15 choice. That would require legal reform to
16 support tactical level information sharing and
17 it would require an effort on behalf of
18 policymakers and FINTRAC to seek to incentivize
19 high value reporting, not low value reporting.
20 Currently the kind of philosophy of the
21 reporting regime is that any report could be
22 useful because one day one bit of information
23 might be relevant to law enforcement and just
24 report everything that you find suspicious.
25 And, you know, therefore the same effort, as I

1 said, is applied to a \$20 transaction as it is
2 to a \$20 million transaction. Now, that system
3 isn't delivering.

4 The other way that you might want to develop
5 the Canadian regime is for FINTRAC to maintain
6 its role as guardian of privacy and protecting
7 other enforcement agencies from having access to
8 Canadians' information outside of a proper
9 threshold and not go down the route of having
10 law enforcement making direct requests to
11 reporting entities but then make FINTRAC more
12 relevant. Give FINTRAC full access to the
13 transaction network of payments information as
14 the Australians are pursuing and make them a
15 guardian of privacy with useful information
16 because right now they are a guardian of privacy
17 that's trying to collect as much as possible to
18 be as relevant as possible and still falling
19 short because of the time lag, because of the
20 lack of direction. But it's entirely possible
21 to move on from a system that was designed in
22 the 80s, paper-based banking, paper-based
23 clients information, to a system that's fit for
24 the 2020s, you know, which could be digital and
25 realtime and still provide protections for

1 privacy at a very high standard but just have
2 more useful information for those that need it.

3 Q Thank you. I now have some questions about your
4 discussion of public/private information
5 sharing. So in your report you identified
6 increased public/private information sharing as
7 an opportunity to enhance Canada's regime. But
8 you didn't consider the constitutional
9 implications of these recommendations in your
10 report; that's correct?

11 A Well, I don't think that's fair. So if you have
12 the report in front of you, you know, beyond the
13 reference annex we've got quite a big section on
14 the Canadian privacy regime which goes into
15 detail about the charter background, PIPEDA and
16 also relevant case law. So I probably would
17 counter that summary.

18 Q Okay. Well, then perhaps to frame my question
19 slightly differently, so some of the proposals
20 that you include are increased tactical
21 information sharing between banks and law
22 enforcement. That's correct?

23 A Yeah, so what came out of the interview process
24 was a series of challenges and we placed the
25 lack of a legal gateway for public/private

1 tactical information sharing as strategic
2 challenge number 2.

3 Q Okay, great. And in the discussion of one of
4 the strategic challenges being lack of
5 responsiveness to law enforcement objectives,
6 you discuss that -- you say on page 33 that:

7 "Canada can achieve a legal framework
8 which provides for the desired level of
9 information sharing between reporting
10 entities in response to law enforcement
11 requests and live investigations."

12 So here you're also looking at increasing the
13 ability of law enforcement and reporting
14 entities to share information?

15 A Yes, so that's in a process by which we
16 encourage Canada to have a strategic view of the
17 threats and also the target operating model that
18 Canada wishes to achieve in order to address the
19 threats effectively which would include a set of
20 information requirements, and then we say
21 relevant to those information-sharing
22 requirements there should be the adequate legal
23 gateway for tactical information sharing.

24 Q And these proposals would effectively circumvent
25 the need for a production order; correct?

1 A No. This -- so most public/private partnerships
2 are in a space of intelligence development
3 rather than evidentiary development. So right
4 now the only opportunity for law enforcement to
5 have a request to reporting entities is through
6 a production order, which is an evidentiary
7 process, and they must already have knowledge
8 that a reporting entity has that account. Now,
9 that's in parallel to this huge amount of
10 resources and huge reporting that's going
11 through from the AML/ATF regime through to
12 FINTRAC, and the problem is that that
13 information, you know, is not able to be
14 responsive to realtime crime; it's not able to
15 be responsive to law enforcement priorities. So
16 from an intelligence development perspective
17 which would inform an investigation prior to the
18 development of the evidence case for a charge,
19 the way in which public/private partnerships
20 that are tactical have worked, which is every
21 other common law country, is that they allow for
22 intelligence purposes to engage in
23 public/private tactical level information
24 sharing.

25 Q Okay. Thank you. Perhaps I could take you to

1 the government response to the statutory review
2 of the *PCMLTFA*.

3 Madam Registrar, if you could please pull up
4 that document.

5 Are you familiar this document, Mr. Maxwell?

6 A Yes, I've read it.

7 Q Okay. Perhaps I could take you to page 4 if
8 that's all right.

9 A Yeah.

10 Q Okay. Great and in a few places in this
11 document the government describes how the
12 *PCMLTFA* achieves a -- or at least endeavours to
13 achieve a constitutional balance between privacy
14 rights and the AML goals of the legislation.
15 And on page 4 they write "the current
16 legislation --" or, sorry let me back up a
17 little bit.

18 "There will be a need to balance
19 anti-money laundering and anti-terrorist
20 financing objectives with the *Charter* and
21 privacy rights of Canadians in terms of
22 implementing changes to the statute and
23 regulation. The current legislation
24 allows FINTRAC to receive financial
25 information for criminal law purposes

1 without prior judicial authorization. To
2 support the reasonableness of this law,
3 FINTRAC was created as an independent,
4 arm's length agency from its disclosure
5 recipients whose mandate explicitly
6 includes ensuring against unauthorized
7 disclosure. Its role is to analyze
8 private which it received from various
9 sources and to disclose information to law
10 enforcement only upon meeting certain
11 legal thresholds. In other words, law
12 enforcement and intelligence agencies
13 cannot merely compel access to FINTRAC'S
14 database its analysis of specific cases."

15 Would you agree that this document presents the
16 view that FINTRAC's independence from law
17 enforcement is a safeguard of the legislation's
18 constitutionality?

19 A Sorry, you are asking for my view of the intent
20 of the author of the paper; is that right?

21 Q Yes. Or Canada's perception that the
22 independence of FINTRAC from law enforcement is
23 important for ensuring that the legislation
24 complies with the charter?

25 A Certainly the judicial legal framework for

1 FINTRAC's establishment and the mandate for
2 FINTRAC's establishment is based on that
3 thinking, yeah.

4 Q And you would agree that if Canadian law
5 enforcement had access to all of FINTRAC's
6 intelligences from their models for other
7 jurisdictions that this would jeopardize this
8 independence?

9 A Well, I think what we make clear in the report
10 is that that model is failing. It's failing on
11 privacy. You're currently generating one of the
12 most extensive data collection AML/ATF
13 frameworks in the world and you're achieving
14 very low results from that process. So I would
15 say that the comment that you just raised is
16 about justifying the current situation, but the
17 paper that we've submitted highlights, you know,
18 the systemic challenges in the current
19 situation.

20 Q Certainly any solutions to those specific
21 challenges must be in accordance with Canada's
22 constitution in order to be viable; no?

23 A Well, as you know, as with fraud information
24 sharing, you know, it's entirely possible to
25 have a legal basis for public/private tactical

1 information sharing and private/private
2 pre-suspicion information sharing if the legal
3 basis is there, which is a political decision
4 which, you know, obviously in the fullness of
5 time would need to be tested in the courts, but
6 there is no reason to think that it wouldn't be
7 compliant with the charter if the legal basis
8 had been established by policymakers, from
9 everything that we have researched for this
10 study and our previous work including a large
11 survey effort on the viability and
12 permissibility of information sharing in Canada.

13 Q Thank you. If I could now take you to page 6 of
14 the government response.

15 A Yes.

16 Q If you could scroll down just a little bit,
17 Madam Registrar.

18 On this page Canada once again discusses
19 some of the safeguards in the legislation that
20 it views as supporting its constitutionality.
21 And Canada writes -- let me get to the right
22 spot.

23 "In the Canadian constitutional context, a
24 number of safeguards exist to strike an
25 appropriate balance between privacy

1 rights, anti-money laundering and
2 anti-terrorist financing objectives. The
3 system to report Suspicious Transaction
4 Reports has been carefully developed with
5 this balance in mind. Furthermore, a
6 legal threshold of "reasonable grounds to
7 suspect" must be met before FINTRAC can
8 share information with the RCMP and other
9 disclosure recipients because they contain
10 confidential private information that law
11 enforcement would otherwise require a
12 search warrant to obtain. The government
13 will continue to review how the regime can
14 be improved without jeopardizing this
15 balance."

16 Would you agree that based on this document or
17 at least at the time of writing this document it
18 was Canada's view that the *PCMLTFA* reflected a
19 careful balancing of AML objectives and of
20 privacy rights under the charter?

21 A Well, I would say much like the previous
22 paragraph, that's focused on explaining and
23 justifying the current regime or the rationale
24 for the current regime or the rationale for the
25 design of the current regime. But from our

1 study and from the evidence available, you know,
2 that regime is failing to provide results either
3 from a financial crime perspective or from a
4 data protection perspective given the vast scale
5 of data collection which is involved in the
6 system and the inefficiencies and effectiveness
7 of the flowthrough of that information and the
8 responsiveness of that information. And as we
9 set out, I suppose in conflict with this
10 paragraph, you know, we do feel that there are
11 opportunities to enhance the privacy protection
12 regime in Canada, reduce the data collection
13 footprint in Canada and increase the
14 effectiveness of financial crime results. Now,
15 it's rare that you would have a policy situation
16 that you could gain on the major kind of axes
17 from the study and I hope you'll agree when you
18 go through it, it's very plausible to gain on
19 effectiveness, efficiency and data
20 proportionality. Usually there should be a
21 trade-off because you've reached perhaps one
22 extent of effectiveness and -- but it's very
23 inefficient and you have to kind of make it more
24 efficient but make it less effective, and, you
25 know, there may be a trade-off. But in Canada

1 because the design of the system, you know,
2 frankly is so poor there's an opportunity for
3 gains on all sides to have a more efficient
4 regime which has a reduced data collection
5 footprint on Canadian society which is
6 supporting more effective outcomes on financial
7 crime. As in Canada, as in Europe and other
8 jurisdictions that have a very robust data
9 protection regime, privacy is a fundamental
10 right but it's not an absolute right. It's
11 balanced with other policy objectives, and, you
12 know, GDPR in many ways does provide a stronger
13 data protection basis, certainly a stronger
14 right of redress for citizens and yet many of
15 the jurisdictions that have a tactical
16 information-sharing partnership are GDPR
17 jurisdictions and they are jurisdictions where
18 the FIU is recording less or receiving less
19 reports, dramatically less than in Canada.

20 In the UK per head of population, the FIU is
21 receiving -- sorry, Canada is receiving 96 times
22 more reports than the Canadian FIU, which is
23 receiving 96 times more than the UK, but it's
24 supporting tactical level information sharing.
25 So yeah, I would say this paragraph is

1 justifying the current system and most of our
2 study is providing the evidence base for the
3 systemic challenges in the current system.

4 Q Thank you. Perhaps just on that point, so
5 certainly your report highlights how FINTRAC
6 currently has a very -- its regime has a large
7 data collection footprint, but from a privacy
8 perspective what may matter is not only how much
9 data is being collected but who can collect it.
10 Would you agree with that?

11 A Well, it's entirely up to Canadian policymakers.
12 So many -- I mean, in terms of who receives the
13 STRs you know, it's set out in the FATF
14 framework that the FIU receives the STRs or
15 SARs, but jurisdictions take a different view
16 about whether that's immediately accessible to
17 law enforcement agencies.

18 Canada has taken a view that that shouldn't
19 be -- or so far has taken a view that that
20 shouldn't be immediately available to law
21 enforcement agencies, and that's certainly
22 hardwired into the mandate of FATF -- sorry,
23 FINTRAC. But if you feel that that model is the
24 way you want to go, then, you know, FINTRAC
25 doesn't have access to the information it needs

1 to provide that function. And it may have made
2 sense during a paper-based system in the 1980s
3 when FATF designed the framework which Canada
4 has followed. But if you do believe that
5 FINTRAC should be the guardian of data and it
6 doesn't really matter how much data they
7 receive, then give them realtime access to the
8 transaction data so that they're actually
9 providing useful information at a higher level,
10 a faster tempo with relevance to realtime crime.

11 Q Thank you.

12 MS. MAGONET: I realize I'm out of time.

13 Mr. Commissioner, would you indulge me and let
14 me ask one last question?

15 THE COMMISSIONER: Yes, certainly.

16 MS. MAGONET: Thank you.

17 Q Just on your last point, Mr. Maxwell. I just
18 want to make sure I understand what you're
19 proposing there.

20 Would it be to give FINTRAC access to
21 realtime data on all financial transactions in
22 Canada?

23 A Well, it could be. That's an option available
24 to policymakers in Canada. So, you know, you
25 have a tremendously expensive system which is

1 around reporting suspicious transaction reports
2 and obliging 30,000-plus entities to report
3 based on suspicion, same effort applies to \$20
4 as \$20 million. The transaction report only
5 covers a hundred transactions, so if you need to
6 report a complex case you're reporting many,
7 many STRs, and that costs a lot in financial
8 terms, and as we go through on the effectiveness
9 indicators you're not achieving a payoff from
10 that on the results from an effectiveness side.

11 So what we highlight in the study is the
12 Australian approach and then propose that as
13 something that Canadians should consider, and
14 the Australian approach is to investigate the
15 opportunity for privacy preserving analytics to
16 engage with transaction flows on a realtime
17 basis.

18 Q And I'm taking it, though, that you didn't
19 consider whether allowing the state to have
20 access to all financial transactions in Canada
21 how that would -- or whether that would comply
22 with privacy rights under the charter?

23 A Well, currently it wouldn't be within the --
24 well, I think, you know, that would be something
25 that Canadian policymakers need to consider.

1 But as I say, you know, we posit two broad paths
2 on this. One is you could have a system which
3 is more responsive to law enforcement
4 investigations and generally producing, you
5 know, requiring a smaller data collection
6 footprint from the FIU. Vastly smaller. Or if
7 you want FINTRAC to really -- you want to
8 prevent law enforcement from being able to
9 engage in tactical information sharing, which is
10 the best route to reduce the data collection
11 footprint for Canada, I would suggest, but if
12 you really want to prevent law enforcement from
13 being able to make tactical information queries
14 then there's a plausible case that FINTRAC
15 should move towards the Australian model and
16 investigate the opportunity for realtime access
17 to transactions, which are now all digital and
18 it's technically possible to do.

19 MS. MAGONET: Thank you. Those are my questions.

20 THE COMMISSIONER: Thank you, Ms. Magonet. And now
21 Mr. Rauch-Davis for Transparency International
22 Coalition who have been allocated 15 minutes.

23 MR. RAUCH-DAVIS: Thank you.

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

25 Q Mr. Maxwell, at the risk of having you repeat

1 the contents of your report, I take it that your
2 report, the FFIS briefing paper that's been
3 presented to this commission, beneficial
4 ownership transparency is excluded from
5 consideration in that report. And I see you
6 nodding your head.

7 A Yes, that's correct. So it's just outside of
8 scope. Not that it's not an important issue,
9 obviously.

10 Q Thank you. And so I take it that the impacts of
11 a beneficial ownership registry on Canada's AML
12 efforts are similarly not the subject of your
13 report.

14 A Yes, that's correct. We state that in the
15 methodology that it's an important issue in
16 considering overall effectiveness but not
17 something we cover in the study.

18 Q And similarly the privacy considerations that
19 would go along with a beneficial ownership
20 registry are not considered in your FFIS report?

21 A No, the study did not consider corporate
22 beneficial ownership.

23 MR. RAUCH-DAVIS: Thank you. Other than that my
24 questions have been covered by Mr. Isaac. Thank
25 you, Mr. Maxwell.

1 THE COMMISSIONER: Thank you, Mr. Rauch-Davis. And
2 thank you, Mr. Maxwell, for sharing your time
3 and expertise with us to give us a very unique
4 perspective on Canada's anti-money laundering
5 regime. We're appreciative and I appreciate it
6 must be getting late your time, so I'm sure
7 you're quite happy that we have drawn to a
8 close.

9 We will adjourn now until tomorrow morning
10 at 9:30.

11 THE WITNESS: Thank you very much.

12 THE REGISTRAR: The hearing is adjourned until
13 January 15, 2021 at 9:30 a.m. Thank you.

14 **(WITNESS STOOD DOWN)**

15 **(PROCEEDINGS ADJOURNED AT 1:13 P.M. TO JANUARY 15,**
16 **2021)**

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