

**PROCEEDINGS AT HEARING  
OF  
JANUARY 15, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**January 15, 2021**

**(Via Videoconference)**

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

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

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

MR. DAVIS: Thank you, Mr. Commissioner. Before we proceed with the next witness I have a small housekeeping matter. Commission counsel have been notified that during Mr. Maxwell's examination yesterday that a document titled "Government Response" was not marked as an exhibit.

Madam Registrar, if I could ask that you pull up that government response document under the screen, please.

I've discussed this with Ms. Magonet, counsel for the British Columbia Civil Liberties Association, Mr. Commissioner, and we mutually propose that it be marked as the next exhibit. That should be 414, Mr. Commissioner.

THE COMMISSIONER: All right. That's fine. Thank you. We'll mark it then as 414.

THE REGISTRAR: Exhibit 414.



1 with the British Columbia Financial Services  
2 Authority; is that right?

3 A That is correct.

4 Q Mr. Elgar, is it fine if I use the acronym  
5 BCFSA? Would that okay be with you?

6 A Yes, it would be.

7 Q Thank you. And how long have you held the  
8 position of Vice President and Deputy  
9 Superintendent of Financial Institutions,  
10 Prudential Supervision?

11 A Since June 2019.

12 Q And what are your responsibilities in that role?

13 A I have accountabilities for the prudential  
14 supervision of credit unions, insurance and  
15 trust companies as well as some quantitative  
16 analytics that we provide for BCFSA.

17 Q And prior to your role with the BCFSA, you  
18 worked as a senior executive at several major  
19 Canadian financial institutions and that  
20 included as Chief Risk Officer of Manulife Bank  
21 of Canada; is that right?

22 A That is correct.

23 Q And prior to your work with those financial  
24 institutions you served in a number of roles at  
25 the federal Office of the Superintendent of

1                   Financial Institutions, that's OSFI; is that  
2                   correct?

3           A       Yeah, actually it was subsequent to my roles at  
4                   the financial institutions I joined OSFI.

5           Q       And what roles did you hold at OSFI?

6           A       I had two particular roles. I was the  
7                   relationship manager for two of the large DSIB  
8                   institutions for a number of years, but because  
9                   of my background in capital markets in the  
10                  trading room I took over the capital markets  
11                  risk assessment team and the quant teams at  
12                  OSFI.

13          Q       And, sorry, you mentioned DSIB clients?

14          A       Yeah, those are the big six banks. Those are  
15                  the domestically systemically important banks.  
16                  I apologize. I shouldn't have used the acronym.  
17                  But the short form for those, DSIBs. So those  
18                  are the largest six banks in Canada.

19          Q       Thank you, Mr. Elgar. And during those roles  
20                  with the financial institutions in OSFI, did you  
21                  have any visibility into British Columbia's  
22                  financial markets?

23          A       Not at those times. Other than conversations  
24                  and dealings with the OSFI representatives here  
25                  in Vancouver while I was in Toronto, but I had

1                   no dealings with any of the institutions in  
2                   British Columbia.

3           Q       And to what degree did your roles with the banks  
4                   and with OSFI entail anti-money laundering work,  
5                   if at all?

6           A       Virtually there was none at the -- early in my  
7                   career with the banks when I was in the trading  
8                   rooms. At the subsequent bank as a chief risk  
9                   officer I did have accountability for the CAMLO  
10                  and the anti-money laundering aspects in the  
11                  program that we put in place at Manulife Bank.

12          Q       Thank you. Mr. Elgar, I'd like to turn to ask  
13                   you some questions about the BCFSA, starting  
14                   with what is BCFSA and what is its mandate in  
15                   British Columbia?

16          A       Yes. The British Columbia Financial Service  
17                   Authority stood up as a Crown corporation on  
18                   November 1st, 2019. It is the successor to the  
19                   Financial Institutions Commission. Essentially  
20                   the role and our mandate is exactly the same as  
21                   it was under FICOM, which was the acronym for  
22                   the prior organization. We are here really to  
23                   ensure the safety and soundness in the financial  
24                   system. We have obligations with a number of  
25                   areas. We take care of pension funds, credit

1 unions, insurance and trust companies of course.  
2 We also have the deposit insurance element and  
3 we have regulatory obligations whereby we work  
4 the Ministry of Finance and others to create  
5 legislation and comment on certain elements  
6 there. We also have a sector, a very important  
7 sector, with regards to the mortgage brokers and  
8 market conduct.

9 Q And you just described I think a few of them  
10 there, but I'll ask again for clarity, what are  
11 the core business areas for which the BCFSA has  
12 regulatory responsibility?

13 A Market mortgage brokers, credit unions,  
14 insurance and trust, pensions, and the deposit  
15 insurance CUDIC.

16 Q And BCFSA has five priorities; is that right?

17 A Yes. Those five priorities are outlined in the  
18 mandate letter. They're also outlined in the  
19 service plan, which is part of the documents  
20 that you have here. Would you like me to  
21 discuss those five?

22 Q Perhaps just list them for now. What are those  
23 five priorities?

24 A The first one is the risk-based supervision and  
25 consumer protection. The second one is

1 engagement with the industry, whatever the  
2 stakeholders are. The other one -- and if I may  
3 I'll just read them off. I've got them listed  
4 here to make sure that I don't miss any of them.  
5 Regulatory governance and legislation. That is  
6 working with the Ministry of Finance to ensure  
7 that we have the legislation and reviews of any  
8 legislation that might be introduced to  
9 parliament. The deposit insurance is updating  
10 and ensuring that the deposit insurance fund and  
11 the mechanisms around managing that fund are  
12 robust, and the last one is anti-money  
13 laundering.

14 Q And who assigns those priorities to BCFSA or who  
15 creates those priorities?

16 A We receive those in January of 2020 from the  
17 Minister of Finance, Ms. James, in a mandate  
18 letter which forms the basis of our service plan  
19 moving forward for the fiscal year.

20 Q And what can you tell the Commissioner about the  
21 anti-money laundering priority and what that  
22 means for BCFSA?

23 A Basically it is initially working  
24 collaboratively with government to improve the  
25 effectiveness of the BC's anti-money laundering

1 regime. There are three subcomponents to that  
2 and it's the development of identifying what the  
3 anti-money laundering regime is to look like and  
4 to work with government in ensuring that BCFSA  
5 is in step with whatever direction the  
6 government ends up taking on anti-money  
7 laundering.

8 Q And to your knowledge, Mr. Elgar, when did that  
9 become a written priority for BCFSA or, if you  
10 know, FICOM its predecessor?

11 A Well, certainly I can say that it was in the, as  
12 I said, the January '20, so for the fiscal 2021  
13 year it was placed in that mandate letter. I  
14 can't in all honesty, Mr. Davis, say what was  
15 prior to that because I wasn't part of the  
16 mandate discussion.

17 Q Okay. And, Mr. Elgar, BCFSA is given its powers  
18 by statute, and that's namely the *Financial*  
19 *Services Authority Act*; is that right?

20 A It is, and we also administer six other or five  
21 other different acts, including the *Financial*  
22 *Institutions Act*, the *FIA*, which is the primary  
23 act that, you know, governs some of our  
24 legislative authority and accountabilities.

25 Q And are those the same statutes that were

1 administered by FICOM?

2 A Yes, they were.

3 Q And what can you tell the Commissioner,  
4 Mr. Elgar, generally about the transition from  
5 FICOM to, as you said, a Crown corporation with  
6 the BCFSA and what that's looked like and what  
7 it means kind of operationally going forward for  
8 the BCFSA?

9 A Certainly. Moving out of core government from  
10 FICOM into BCFSA into a Crown has afforded the  
11 opportunity to become more modern, effective and  
12 efficient, and in particular there's a lot more  
13 transparency and latitude as a Crown  
14 corporation. For example, we have more control  
15 over our operating budget. As you may be aware,  
16 Mr. Davis, that the funding for BCFSA, as was  
17 FICOM to a certain extent, comes from fees from  
18 industry. At the end of the calendar -- or  
19 fiscal year rather, under the government, core  
20 government, any surplus that might have resulted  
21 from operations was returned back to the  
22 treasury back to the core government. As a  
23 Crown corporation BCFSA, any surplus that is  
24 retained at the end of the year can be used to  
25 reinvest in technology, resources or other

1 elements within the organization directly; it  
2 doesn't have to be returned back to government.  
3 As an example, it affords us, as BCFSA we are  
4 migrating to Microsoft 365, for example, in the  
5 cloud, so our core government is a little  
6 further behind. We need this moving forward  
7 into our anticipated amalgamations with a couple  
8 of other entities later on in the year.

9 MR. DAVIS: Madam Registrar, if I could ask that you  
10 please pull up the document FSA0005.0001.  
11 Should be called "BC Financial Services  
12 Authority Organizational Chart" from the list of  
13 documents, please.

14 THE WITNESS: That's number 9, I think. Yeah.

15 MR. DAVIS:

16 Q Mr. Elgar, do you see the document on the  
17 screen?

18 A Yes, I do.

19 Q And do you recognize it as an organizational  
20 chart for the BCFSA as of November 30th, 2019?

21 A That's correct, yes.

22 MR. DAVIS: Mr. Commissioner, if I could ask that  
23 this be marked as the next exhibit. It should  
24 be 415, please.

25 THE COMMISSIONER: Yes, that will be 415. Thank you.

1 THE REGISTRAR: Exhibit 415.

2 **EXHIBIT 415: BCFSA Organizational Chart**

3 **November 30, 2019**

4 MR. DAVIS: And, Madam Registrar, if you could turn  
5 to page 7 of the PDF, please.

6 Q Thank you. Mr. Elgar, are you able to see that  
7 okay?

8 A Yes, I can.

9 Q And, Mr. Elgar, is it fair to say that this  
10 page as well as the next two --

11 Madam Registrar, if you could scroll down to  
12 page 8 really quickly. Thank you.

13 Mr. Elgar. Do you see that?

14 A Yes, I do.

15 Q And to page 9, Madam Registrar, please.

16 Mr. Elgar, are you able to see that?

17 A I can, yes.

18 Q Is it fair to say that these three pages show  
19 the structure of your group that relates to  
20 financial institutions regulation by BCFSA?

21 A Well, as a correction, Mr. Davis, the first two  
22 represent my accountabilities on supervision,  
23 which is if you can see at the top it's Vice  
24 President and Deputy Superintendent of Financial  
25 Institutions Supervision. That is my

1                   accountabilities. The third chart that you  
2                   showed which is regulation, which is a different  
3                   individual's responsibility. Now, we work very,  
4                   very closely and obviously we are very, very  
5                   closely linked, but there are the Vice President  
6                   and Deputy Superintendent are two different  
7                   people. I have the first two charts and another  
8                   gentleman Frank Chong has the chart here for  
9                   regulation.

10            Q     Thank you. And so just for the record, it's  
11                   only those first two pages, so that would be  
12                   pages 7 and 8 of this exhibit that show the  
13                   structure of the groups that you work with; is  
14                   that correct?

15            A     That is correct, yes. That's where my  
16                   accountabilities directly lie.

17            Q     And, Mr. Elgar, considering this chart as a  
18                   whole, is there a group or body within the BCFSA  
19                   that we might see on these charts that deals  
20                   with anti-money laundering issues?

21            A     Not explicitly. As I indicated, the anti-money  
22                   laundering would be part of the reviews done by  
23                   the supervision team in their examination of the  
24                   provincially regulated financial institutions,  
25                   whether it be a targeted review or a full desk

1 review or some other methodology that we use  
2 based on the supervisory framework that we  
3 deploy.

4 Q Thank you. And the supervision team, where on  
5 this chart or on this document -- sorry, not on  
6 this chart. Where can we see the supervision  
7 team?

8 A Well, the chart you have up now you see the  
9 three credit union areas.

10 Q M'mm-hmm?

11 A Right. So on the far right-hand side of that is  
12 also -- and I have to look. If I may, I'll just  
13 look on my paper because I can't quite see the  
14 far right corner here. You have also have  
15 central credit union team. There's three people  
16 there. That falls under the credit union  
17 supervision groups which I have accountability  
18 for. If you were to go to the next page,  
19 Mr. Davis, you would see that there's --

20 Q Page 8?

21 A Yeah. Page 8, yes. You would see that  
22 insurance and trust team. The Director of Risk  
23 Surveillance, that's the quantitative analytics  
24 team which I referred to earlier. And the last  
25 group is a new group that was put into place as

1 part of BCFSA. We call it the practices team.  
2 Effectively what those individuals  
3 accountability revolve around standardization  
4 and modernizing some of the processes,  
5 documents, templates, content of letters,  
6 et cetera, for supervision within BCFSA.

7 Q Thank you, Mr. Elgar.

8 And, Madam Registrar, if we could go back to  
9 page 7 of this document just for a moment,  
10 please.

11 Looking at, Mr. Elgar, the teams you've  
12 described, so the three credit unions and the  
13 one central credit union team. What sorts of  
14 qualifications so staff on these teams have?

15 A It will vary. You know, the junior individuals  
16 would have less practical experience, for  
17 example, as an entry level position. But when  
18 you get to the directors, the directors have  
19 either professional designations in accounting  
20 or management accounting. We've had legal  
21 people with law degrees in those roles. We have  
22 certified internal auditors. They've all had  
23 many years of experience. And so what we are  
24 looking for, people who understand financial  
25 analysis and have a certain acumen and

1                    capability to analyze financial data. We have  
2                    some people have economic backgrounds, which is  
3                    very helpful in understanding the macroeconomic  
4                    influencers when we're looking at risk  
5                    assessment in the credit union space.

6                                       So accounting, legal. Actually there are  
7                    one or two engineers, and generally an acumen to  
8                    understand business and the relationships of the  
9                    financial services industry.

10                  Q    And that experience in analysis and analytics,  
11                    that comes more from a prudential risk  
12                    standpoint rather than an approach, an  
13                    anti-money laundering sort of standpoint. Is  
14                    that a fair statement?

15                  A    Yes. Yes, it is. You know, we are a prudential  
16                    regulator. We are not necessarily a purely  
17                    rules-based compliance regulator like some  
18                    international regulators may be. So we are  
19                    looking and adopting at principles for robust  
20                    governance and risk management that is  
21                    commensurate with the risk profile of the  
22                    institution. We also apply the recognition,  
23                    very important, of proportionality in our  
24                    expectations and work that we do. And you know,  
25                    as an example or to explain that is the largest

1 credit unions in British Columbia have many  
2 thousands of employees and, you know, scores of  
3 branches. Some credit unions in  
4 British Columbia have a single branch and have  
5 only four employees and maybe 1,000 or  
6 1,500 members, but the expectations around  
7 certain core functions of governance, good  
8 governance, proper governance and expectations  
9 around risk management from a prudential point  
10 of view are the same for the largest and the  
11 smallest. The application will vary depending  
12 on scope and scale.

13 MR. DAVIS: Madam Registrar, I won't need that  
14 document displayed any longer. Thank you.

15 Q Mr. Elgar, you've helpfully gone into a bit of  
16 the credit union space describing the credit  
17 union space in British Columbia, and I'm hoping  
18 you can explain for the Commissioner what sorts  
19 of products and services that credit unions  
20 offer in British Columbia. I guess what I'm  
21 hoping you can explain is whether those credit  
22 unions will offer simple products to the more  
23 complicated, like the big banks for example,  
24 derivatives for hedging purposes or making  
25 markets?

1           A     Yes, absolutely I can. All the credit unions in  
2                   British Columbia -- there are 40 of them and  
3                   there are the two central credit unions,  
4                   Stabilization Central and Central 1. But all  
5                   the credit unions in British Columbia  
6                   fundamentally do the same thing. They take  
7                   deposits from their members and they lend money  
8                   back out in some sort of retail or residential  
9                   type lending. Mortgages primarily.

10                         With regards to the complexity of the  
11                         products, with the exception of maybe one or  
12                         two, or maybe three or four even, of the larger  
13                         credit unions, the credit unions in  
14                         British Columbia are really that model; they  
15                         take deposits and lend it out. Nothing more  
16                         complicated than that. Some have subsidiaries  
17                         where they may provide certain wealth management  
18                         support in a collaborative role with some other  
19                         providers of those services, like some money  
20                         market funds or, you know, elements like that.  
21                         Some have some subsidiaries for insurance as  
22                         well and they provide insurance products, but  
23                         the vast majority of the credit unions are very  
24                         simple, take deposit and lend it out. To  
25                         answer your second part of your question with

1                    regards on a comparative to the banks, there are  
2                    no credit unions that are market makers in  
3                    derivative products. They are not market makers  
4                    in foreign exchange; they generally are users of  
5                    it. Some credit unions do, however, use  
6                    derivatives for hedging purposes, but they do  
7                    not make markets in derivatives.

8                    MR. DAVIS: Thank you. Mr. Commissioner and Madam  
9                    Registrar, if I could just double-check that the  
10                   last document, I believe that that's FSA0005,  
11                   was marked as an exhibit.

12                   THE COMMISSIONER: Was that 415, Madam Registrar?

13                   THE REGISTRAR: Yes, it was marked as 415.

14                   MR. DAVIS: Thank you, Mr. Commissioner and Madam  
15                   Registrar. Thank you.

16                   Q    Mr. Elgar, you mentioned centrals in your  
17                   previous answer. Can you describe what a  
18                   central is in terms of credit unions?

19                   A    Absolutely. The credit unions are cooperative  
20                   organizations, I think as the commission may be  
21                   well aware, and they are actually owned by their  
22                   members and the members are the depositors of  
23                   the organization. The central, and in  
24                   British Columbia's case Central 1 is the  
25                   cooperative for the cooperatives. All of the

1 credit unions own Central 1. And what  
2 Central 1's you know, *raison d'etre* to a large  
3 extent is to provide services to the credit  
4 union system on an effective scale basis whereby  
5 they provide treasury service, which includes  
6 money market, foreign exchange services to the  
7 smaller credit unions. They provide education  
8 to board members and management on certain  
9 elements. They provide payments and settlement  
10 services for the credit union system. Up until  
11 December 31st, 2020, they were the mandated  
12 mandatory liquidity pool manager for the credit  
13 union system. So they provide a series of  
14 support and elements of core and fundamental  
15 financial services support to the credit unions,  
16 and the advantage of that, Mr. Davis, is that  
17 many of the smaller credit union as I indicated,  
18 you know, one or two branches, maybe a handful  
19 of employees, they just don't have the scale and  
20 scope to manage all those services themselves.  
21 The central provides that support to the system.

22 Q And, Mr. Elgar, you may have mentioned this, but  
23 to your knowledge do centrals provide anti-money  
24 laundering services to the credit unions in  
25 British Columbia?

1           A     They actually -- yes, they do. They provide a  
2                   number of services. They provide everything  
3                   from anti-money laundering program development,  
4                   education. They do screening for any transfers,  
5                   wire transfers because they are the agent for  
6                   payments and settlements. So they provide all  
7                   those services for a number. I think there are  
8                   26 credit unions that use Central 1 AML services  
9                   program.

10          Q     And that's 26 out of 40 that are currently  
11                   overseen and supervised. I believe it was 41,  
12                   but there was a merger last year and it's now  
13                   40. Is that right? Credit unions.

14          A     Yes, that is correct, two credit unions merged  
15                   on January 1st of 2020.

16          Q     And just to be clear as well, BCFSA regulates  
17                   these centrals in British Columbia; is that  
18                   right?

19          A     That is correct. They fall under my  
20                   accountability for supervision.

21          Q     And taking a step back, Mr. Elgar, I'm wondering  
22                   if you can tell the Commissioner based on your  
23                   experiences what are the differences and  
24                   similarities in between the approach that OSFI  
25                   takes to regulating the big banks and that that

1           BCFSA takes with respect to credit unions on a  
2           very, very kind of general scale.

3           A    Absolutely. Understood. Fundamentally we  
4           follow the same approach in British Columbia as  
5           OSFI. We are both prudential regulators. We  
6           have a supervisory framework which is an outline  
7           of the methodologies and principles that we  
8           follow which is identical for all practical  
9           purposes to what OSFI uses. And we are -- we  
10          apply, like OSFI to a large extent, a risk-based  
11          approach to supervision and recognize the  
12          proportionality, which I alluded to earlier,  
13          which is necessary when you have such a diverse  
14          set of institutions within the system here in  
15          British Columbia in terms of size, scale,  
16          complexity and geographic location. So  
17          basically BCFSA and OSFI follow the same  
18          fundamental supervisory framework approach. I  
19          hope that answers your question.

20          Q    It does, thank you. And my followup to that  
21          would be is that true with respect to anti-money  
22          laundering as well that the similarities are  
23          notable there?

24          A    Yes. I mean, we have used and referred to the  
25          guideline that OSFI has published on anti-money

1                   laundrying which is guideline B-8, and when we  
2                   do our work and review of credit unions, the  
3                   anti-money laundrying program expectations as  
4                   outlined in OSFI B-8 are elements that we deploy  
5                   when we do our work here in British Columbia.

6                   MR. DAVIS: Madam Registrar, if I could ask that you  
7                   pull that up. It's a document titled "Office of  
8                   the Superintendent of Financial Institutions of  
9                   Canada Guideline B-8." From the list of  
10                  documents, please.

11                 Q    Mr. Elgar, you see that on the screen there?

12                 A    Yes, I do, thank you.

13                 Q    Recognizing that you're not the author of this  
14                  document, do you recognize it as a PDF copy of  
15                  guideline B-8 produced by OSFI in December 2008?

16                 A    Yes, I do.

17                 MR. DAVIS: Mr. Commissioner, if I could ask that  
18                  this please be marked as the next exhibit.

19                 THE COMMISSIONER: 416.

20                 THE REGISTRAR: Exhibit 416.

21                         **EXHIBIT 416: Office of the Superintendent of**  
22                         **Financial Institutions Canada guideline,**  
23                         **Deterring and Detecting Money Laundrying and**  
24                         **Terrorist Finance No. B-8 dated December 2008**

25                 MR. DAVIS:

1           Q     And, Mr. Elgar, I'm not going to take you  
2                    through the document in its entirety, but I take  
3                    your evidence is that BCFSA relies on guideline  
4                    B-8 in conducting it's own anti-money laundering  
5                    work on credit unions. Is that fair?

6           A     Yes, I mean, we refer to it and we draw on the  
7                    principles and the expectations that are  
8                    outlined in this document.

9           Q     And what can you tell the Commissioner about  
10                   those principles and expectations that you rely  
11                   on? Maybe you can describe that a little bit,  
12                   please.

13          A     Okay. I'd be happy to. Within this document  
14                   OSFI B-8 they outline in some detail the  
15                   elements of an effective anti-money laundering  
16                   program, and those are the same ones that we  
17                   look at when we are doing our work under the  
18                   auspices of an operational risk assessment. So  
19                   for example, is there senior manager oversight  
20                   of an anti-money laundering program and  
21                   institution? Have they identified an individual  
22                   be the chief anti-money laundering officer, or  
23                   CAMLO? Do they do the inherent -- does the  
24                   institution do an inherent risk assessment based  
25                   on geographic location, maybe the products

1                   they're offering? Do they know their clients?  
2                   Have they got those documents in place? Are  
3                   policies up to date? Do you have an anti-money  
4                   laundering policy? What do you do for dual item  
5                   authentication? Do you have a policy in place  
6                   and a practice in place with regards to  
7                   non-face-to-face identification? What are the  
8                   criteria you use? What are some of the other  
9                   ones? Do you have ongoing training? That's  
10                  really important. And updating for anti-money  
11                  laundering. Is there a self-assessment of the  
12                  efficacy of your program that has been done?  
13                  And then the last element is one that is a  
14                  little harder to do, particularly with the  
15                  smaller institutions, is an effectiveness test  
16                  because it's rather hard sometimes to do a  
17                  self-assessment and an effectiveness test on  
18                  yourself because you don't have the breadth of  
19                  staff and colleagues to maybe independently like  
20                  your own independent internal audit or  
21                  something. You have to use a third party to do  
22                  it. But these are some of the elements that we  
23                  look at when we're discussing with an  
24                  institution as to whether or not they have an  
25                  anti-money laundering program in place and we

1 work very, very closely with their management to  
2 understand what they do, how they do it. And I  
3 must also stress, Mr. Davis, I mean, larger  
4 institutions will have three, four, five maybe,  
5 or six people dedicated to an anti-money  
6 laundering program. A smaller institution may  
7 only have one. So we have to take that into  
8 consideration when looking at those elements.

9 Q And that, Mr. Elgar, in the latter situation  
10 where a smaller credit union, is that a  
11 circumstance where they might rely on centrals  
12 to help develop that program?

13 A Yes, absolutely. Absolutely. That's absolutely  
14 correct.

15 Q And this document is quite long, but maybe you  
16 can help me clarify this. My appreciation is  
17 that the entirety of guideline B-8 isn't  
18 necessarily applicable to credit unions. Is  
19 that fair?

20 A It is. Not all of it, but I think there are  
21 significant elements of it, particularly around  
22 the program as I just described, which are  
23 directly applicable to a credit union. And if I  
24 could draw an analogy just for purposes of that,  
25 you know, regulators globally but in OSFI's case

1                   here, you know, they come up with a residential  
2                   mortgage underwriting guideline which is  
3                   explicit for federally regulated institutions.  
4                   BCFSA has something very similar which applies  
5                   to credit unions. And the point I'm trying to  
6                   make is that the prudential principles apply  
7                   equally whether in a federal jurisdiction or a  
8                   provincial jurisdiction. There are good  
9                   governance and risk management expectations and  
10                  principles associated with that irrespective of  
11                  the jurisdiction overseeing it and these are  
12                  market practice. These are elements that have  
13                  been picked up from Basel and the financial  
14                  stability board. These are market -- global  
15                  market expectations and principles that are  
16                  being applied to the financial services  
17                  industry.

18                 Q     Mr. Elgar, has BCFSA issued similar policy  
19                     guidelines of its own on anti-money laundering  
20                     or does it just rely on guideline B-8?

21                 A     It has not issued its own guideline. BCFSA has  
22                     issued guidelines but not explicitly on  
23                     anti-money laundering. In 2020 we issued a  
24                     liquidity management guideline. We have two  
25                     guidelines in consultation with industry right

1                   now, one on outsourcing, and we had been  
2                   hitherto relying on OSFI's B-10, which is an  
3                   outsourcing guideline, but we are issuing our  
4                   own now, as I say, for consultation, and one on  
5                   information security. And those are for  
6                   consultation and hopefully we'll be able to  
7                   issue those explicitly in 2021.

8           Q       Is there anything similar planned for anti-money  
9                   laundering at this point?

10          A       I think to be honest, the answer is, you know,  
11                   we would like to get some clear direction as to  
12                   where our mandate will lie with anti-money  
13                   laundering and then we can tailor it  
14                   accordingly, but in the interim we will continue  
15                   to refer to the high level principles around the  
16                   program of B-8.

17          Q       Thank you.

18                   Madam Registrar, if I could ask that you  
19                   please pull up the document titled "BCFSA Letter  
20                   From Frank Chong Re Anti-Money  
21                   Laundering/Anti-Terrorist Financing" from the  
22                   list of documents, please.

23                   Thank you. Mr. Elgar, do you see that  
24                   document before you?

25          A       Yes, I do, thank you.



1                                   and operational risk."

2                                   Do you see that?

3                   A       Yes, I do.

4                   Q       And what's your understanding of how anti-money  
5                                   laundering and anti-terrorist financing formed  
6                                   an integral part of FICOM's supervisory  
7                                   framework?

8                   A       It is in part as it says here in this first  
9                                   paragraph, is regulatory compliance and the  
10                                  assessment of operational risk. Anti-money  
11                                  laundering is part of our review, falls under  
12                                  our review of operational risk and operational  
13                                  management at any of the credit unions or trust  
14                                  companies, insurance companies that we look at.  
15                                  You know, it is an important component because  
16                                  in many ways if you have an effective governance  
17                                  regime and risk management processes, they will  
18                                  be reflected in the management of credit risk,  
19                                  the management of liquidity and funding risk,  
20                                  should be also evident with your management and  
21                                  capabilities around operational risk.  
22                                  Anti-money laundering terrorist financing would  
23                                  be a test that could be used to ascertain and  
24                                  make the assessment as to whether or not you  
25                                  have an effective risk management program that

1 is commensurate with the profile of the  
2 organization. So yes, I mean, I can explain how  
3 we actually go about that work, but I mean, I  
4 think that is really a key fundamental. I think  
5 also it's important if you look, you know,  
6 FICOM, BCFSA, we encourage all the provincially  
7 regulated institutions to refer to the  
8 risk-based guide that FINTRAC has put forward  
9 and ensure that they have familiarity with the  
10 proceeds of crime, money laundering and  
11 *Terrorist Financing Act*, and that's a very, very  
12 important element as well, because that is  
13 really the benchmark against which we are going  
14 to be looking at various institutions'  
15 compliance and the principles, together with B-8  
16 as I mentioned a moment ago.

17 Q And so is it fair to say that this statement in  
18 the first paragraph that AML/ATF forms a  
19 significant component of I suppose now  
20 BCFSA's --

21 A BCFSA.

22 Q -- assessment of both regulatory compliance and  
23 operational risk, that's still true for BCFSA in  
24 your view?

25 A Yes, it is still true.

1           Q     And maybe we can unpack what you just described  
2                   in your two answers ago now. You said maybe you  
3                   could describe how BCFSA goes about looking for  
4                   AML indicators or relevant information on AML  
5                   when it's conducting its prudential risk review.  
6                   So maybe you could explain for the commission to  
7                   start out how often and when a credit union  
8                   would be selected for that sort of review.

9           A     Okay. Up into this point we have not selected a  
10                   credit union explicitly saying we are doing a  
11                   focused AML review, to be clear. The AML  
12                   component and our assessment of AML operations  
13                   procedures fall under the assessment of  
14                   operational risk. And it's important to also  
15                   note that we have semi-annual discussions with  
16                   FINTRAC. I think that acronym everyone should  
17                   be familiar with. And FINTRAC does explicit,  
18                   has the explicit mandate to oversee anti-money  
19                   laundering in the institutions here in  
20                   British Columbia. We work with FINTRAC who  
21                   provide us information on various credit unions  
22                   that they or insurance companies, trust  
23                   companies that they have visited and may have  
24                   noted particular elements of -- they use the  
25                   term "deficiencies" where some of the AML

1 programs in those institutions need to be  
2 tightened. With that information when we do our  
3 own operational prudential review, we will have  
4 discussions with the institution, and as an  
5 indication we would say well, we note that  
6 FINTRAC were here and they have identified, you  
7 know, 1, 2, 3, 4, whatever it is number of  
8 deficiencies; how is your program to meet those  
9 deficiencies going? Have you met them? If you  
10 haven't met them why haven't you? When are you  
11 going to? And then we follow up and have those  
12 discussions that help focus our attention on the  
13 risk assessment. If an institution is dealing  
14 with these types of deficiencies in a very  
15 effective and timely manner, it's a good  
16 indication that they are taking it seriously and  
17 their other programs are up to date. So it's a  
18 collaborative process. We also look at, as I  
19 mentioned a moment ago when we discussed OSFI  
20 guideline B-8, those six or seven elements  
21 within the program, we assess and make sure that  
22 those are in place and constantly updated and  
23 reported to the board of directors.

24 Q Mr. Elgar, maybe you can help me understand, so  
25 those reviews, the prudential reviews that BCFSA

1                   will conduct which I understand have a portion  
2                   of AML in them --

3           A     Yes.

4           Q     -- are those separate from the biannual audits  
5                   of policies and procedures that credit unions  
6                   have to conduct?

7           A     Well, I mean, if I understand your question  
8                   correctly, Mr. Davis, what we do is definitely  
9                   separate from what the credit unions have to do.

10          Q     Right.  Okay.

11          A     Maybe I'm not understanding your question  
12                   properly.

13          Q     No, no.  I'm just trying to understand,  
14                   Mr. Elgar, the connection, if any, between those  
15                   biannual internal or external audits that happen  
16                   of credit unions and the work that BCFSA does.  
17                   I would imagine that BCFSA relies on those  
18                   audits in the course of conducting its own  
19                   reviews.  Is that fair?

20          A     Well, I'm not sure what you're referring to when  
21                   you say the biannual audits.  Are you talking  
22                   about the meetings we have biannually with  
23                   FINTRAC?

24          Q     No, I am not.  And, Mr. Elgar, maybe I'll step  
25                   back then.  What sorts of -- to your knowledge,

1                   what sorts of reviews or audits of their own  
2                   policies and procedures do credit unions have to  
3                   conduct?

4           A       Oh, okay. Yes. Okay, sorry. Yeah, they have  
5                   to do it, depending -- in a policy, and there's  
6                   any number of different policies, within the  
7                   document itself they will have a review schedule  
8                   identified. So the investment and lending  
9                   approvals policy, for example, which is actually  
10                  stipulated in the *FIA*, that has to be done  
11                  annually. You could have a governance review  
12                  policy or a liquidity management or a  
13                  contingency plan, but it might have to be done  
14                  annually. Some might have to be done every  
15                  three years. So the actual policies that they  
16                  may be looking at would have their own schedule.

17                         Any money laundering, because of education  
18                         and ongoing training we have an expectation that  
19                         that is viewed at least annually.

20           Q       Okay.

21           A       Those particular policies.

22           Q       And when BCFSa conducts its own examinations of  
23                   those firms, it's reviewing those AML policies  
24                   to see whether they're in place and whether  
25                   they're effective; is that right?

1           A     Yes, we look at the policies. We'll see when  
2                   they've been last reviewed. We look at board  
3                   documentation to understand whether or not an  
4                   AML report has been provided to senior  
5                   management, i.e., the board, which is one of the  
6                   requirements. We want to understand how is the  
7                   CAMLO -- how is the CAMLO operating, who is the  
8                   CAMLO. Do they have a certain amount of  
9                   independence? Do they have a robust program?  
10                  We also look at the know your client checklists  
11                  and various programs that should be in place to  
12                  verify source use of funds, verify that the  
13                  client is actually who they say they are, you  
14                  know, income and things like that. There are  
15                  also certain elements with some of the mortgage  
16                  documentation as to whether or not it's captured  
17                  as a requirement as what are the mortgage -- or  
18                  not just mortgage but borrowing funds applied,  
19                  what are they being applied to, as well as what  
20                  is the source of income to repay that loan if  
21                  you're going to take it. So those are all  
22                  elements we want to ensure that the source and  
23                  use of funds, whether directly coming into the  
24                  institution or the institution are lending, that  
25                  you can track that through and understand where

1                   it's coming from and where it's going to.

2                   Q     And, Mr. Elgar, I think one document that might  
3                   help us and the Commissioner understand this is  
4                   the risk matrix.

5                                 Madam Registrar, if I could ask that you  
6                   please pull up FSA0018 – Risk Matrix from the  
7                   list of documents, please.

8                                 Mr. Elgar, are you able to see that  
9                   "Appendix 1 – Risk Matrix" on the screen?

10                  A     Yes, I can, thank you.

11                  Q     And you recognize it of course as the BCFSA's  
12                  risk matrix provided to the commission?

13                  A     That is correct.

14                  MR. DAVIS: Mr. Commissioner, if I could ask that  
15                  this please be mark as the next exhibit.

16                  THE COMMISSIONER: 418.

17                  THE REGISTRAR: Exhibit 418.

18                                 **EXHIBIT 418: BCFSA Risk Matrix**

19                  MR. DAVIS:

20                  Q     Mr. Elgar, what can you tell the Commissioner  
21                  about this document?

22                  A     This document is actually a physical  
23                  representation of the approach and methodology  
24                  that we employ when we do a review of a  
25                  provincially regulated institution. This is the



1           experience and operational management, or  
2           running the first line of defence? Is there a  
3           risk management and compliance function? How  
4           are they working? You know, we spend an awful  
5           lot of time digging into these. Similarly with  
6           internal audit, do we have that verification  
7           process in place? Then from a corporate  
8           governance with regards to residential mortgage  
9           lending, corporate governance from the senior  
10          management and board. We look at board reports.  
11          We look at information that is flowing over.  
12          The centralized activities, these are not  
13          necessarily -- well, they're not significant  
14          activities because they apply to any number of  
15          significant activities that may be evident in an  
16          institution. So again just in order, many  
17          credit unions use information technology or an  
18          automated adjudication process. How is that  
19          applied? What is the risk of that? Do they  
20          have controls around it? Treasury is used for  
21          funding services and things like this.  
22          Anti-money laundering, as I described the  
23          process, do they have processes and policies in  
24          place when they're verifying the source and use  
25          of funds, do they verify the client, all

1                   underneath the credit side on a mortgage  
2                   transaction, for example? And, you know, what  
3                   are the tools in place? Is any suspicious  
4                   transactions being reported? Do any of the  
5                   elements that are in the program, the six or  
6                   seven elements with regards to training,  
7                   et cetera, do they show up in that particular  
8                   assessment of the significant activity. If you  
9                   had another activity in a different -- in a  
10                  larger institution they may have commercial  
11                  lending, which would be a separate one. What  
12                  are the implications with -- the same principles  
13                  for AML have to show up, but also you apply that  
14                  to a commercial operation as opposed to a retail  
15                  or individual member activity. We go along and  
16                  we assign certain ratings for each of those and  
17                  we come up with a net risk assessment of either  
18                  high, low --

19                  Q     Sorry, Mr. Elgar. Sorry to interrupt you.

20                                 Madam Registrar, if you don't mind just  
21                                 scrolling out on the document a little bit,  
22                                 Mr. Elgar -- yes.

23                                 Mr. Elgar, that at the bottom there, that is  
24                                 a legend that describes the risk rating  
25                                 criterion and the kind of acronyms for those

1 risk rating; is that right?

2 A That is correct, yes. I don't think you want me  
3 to explain them, but I mean that's basically  
4 what the I assessment is.

5 Q Yes, and I don't -- sorry, you can continue. I  
6 just wanted to make sure that the Commissioner  
7 had the benefit of seeing the legend on the  
8 bottom.

9 A Okay. Thank you. When we go through that  
10 process, we come up with a net risk position on  
11 that particular significant activity which takes  
12 into consideration all of those elements, the  
13 key inherent risks, the quality of risk  
14 management which are designed to mitigate the  
15 key inherent risks, and also take into the  
16 consideration the other centralized activities  
17 that may be used or either as a support function  
18 or as a critical area of the significant  
19 activity. With that net risk which is in that  
20 bottom overall net rating you can see at the  
21 very bottom of the left-hand column if you  
22 scroll right across to the right under the net  
23 risk column, you can see there's a box. There  
24 will be a rating in there. Then you look at the  
25 institutions. Do they have sustainable

1 earnings? Have they had sustainable earnings?  
2 What is the process going forward? What is  
3 their capital base? Capital, as I think we may  
4 all know, is the singular source for loss  
5 absorption and the most important element in  
6 that regard. Liquidity. Do they have a  
7 liquidity profile to help survivability in a  
8 stress event. All of that comes into a  
9 composite risk rating which is then ascribed to  
10 the institution and then we look at an  
11 intervention stage rating whether or not it's  
12 normal. Early warnings may be required  
13 depending on a rating of an institution. And it  
14 goes up into four different gradations with  
15 increasing risks to the viability of an  
16 institution.

17 So this is really the graphic depiction of  
18 an awful lot of work that we do to come to a  
19 composite risk rating for any particular  
20 institution. As you can see, you know, the  
21 number of significant activities may change  
22 depending on the size. The largest credit union  
23 here in British Columbia might have four or five  
24 of those lines. The smallest credit union might  
25 only have the one.

1           Q     Thank you. That's very helpful, Mr. Elgar. I  
2                    just wanted to clarify for the record looking at  
3                    this chart, is it fair to say that AML as  
4                    reflected in this table is only a part of the  
5                    work that BCFSA does when it's considering the  
6                    prudential risk of credit unions in the  
7                    province?

8           A     That is correct. And, Mr. Davis, to be again  
9                    fully transparent, I mean, what you are looking  
10                   at is part of the efforts that we are making at  
11                   BCFSA to modernize and become more effective and  
12                   efficient. We are in the process of updating  
13                   our supervisory framework and that AML and  
14                   centralized activities are actually been brought  
15                   up and put on formally on to this matrix. If  
16                   you were go on to the BCFSA website and look at  
17                   the supervisory framework that is currently  
18                   there, which we still use, you won't see AML on  
19                   the risk matrix. This is something that we  
20                   started to put in at the beginning of calendar  
21                   year 2020 and have been working on that since  
22                   and we are expecting to deliver to our board,  
23                   BCFSA board, before March 31st of this year, the  
24                   end our fiscal year a revised supervisory  
25                   framework which will reflect the risk matrix

1                   that you see in front of you.

2                   Q    Thank you.  Maybe if we can just unpack that a  
3                   little bit.  So is it your evidence that the  
4                   risk matrices that preceded this one before you,  
5                   they did not have a row for AML?

6                   A    That's correct.

7                   Q    Why was it added this year, to your knowledge?

8                   A    Well, because we have a mandate and a service  
9                   plan obligation to enhance the government's  
10                  efforts to improve AML.  AML was captured under  
11                  operational risk.  It's not that -- we didn't  
12                  ignore it.  We've always done it, but we brought  
13                  it out to the fore, just like treasury, which is  
14                  critically important, and information  
15                  technology.  Information technology -- oh,  
16                  sorry.  Go ahead.

17                  Q    No, Mr. Elgar, please go ahead.  Thank you.

18                  A    I was going to say information technology in the  
19                  old form did not show up to the same extent  
20                  because that risk matrix was completed in 2012.  
21                  I think as the commission will recognize that  
22                  information technology, information security in  
23                  the last five years has accelerated and become  
24                  elevated as a risk factor and it becomes  
25                  increasingly important.  So what we're doing is

1                   modernizing and recognizing various elements,  
2                   information technology, treasury risk management  
3                   and AML, and elevating them more importantly and  
4                   bringing it to prominence in the risk matrix.  
5                   They always were there, but never depicted in  
6                   the same fashion.

7                   Q     Right.  And that becomes I think clear through  
8                   your earlier testimony where you clarified that  
9                   AML/ATF has always been a priority for FICOM  
10                  looking at that Frank Chong letter; is that  
11                  fair?

12                 A     Absolutely.  Absolutely.  It just didn't have an  
13                  explicit demarcation on the risk matrix.

14                 Q     In concrete terms, Mr. Elgar, what are going to  
15                  be the consequences of that change, now having  
16                  AML as a line item on the risk matrix?

17                 A     I think it's going to have a couple of important  
18                  changes.  One, it's going to reinforce BCFSA's  
19                  view for credit unions or insurance companies,  
20                  trust companies, that AML is important.  It is  
21                  part now that we're signalling it as a line item  
22                  of centralized activities, our expectations are  
23                  becoming elevated with the institutions, and  
24                  it's part of our overall mandate where we're  
25                  looking to engage with industry and our external

1 stakeholders so there are no surprises. We are  
2 communicating through a number of different  
3 tools, advisories and in particular on  
4 guidelines what are our expectations as BCFS  
5 continues to evolve, become much more modern and  
6 effective in its supervision of the financial  
7 services industry in British Columbia, largely  
8 to ensure the safety and soundness. And again  
9 it comes back to the consistency to what the  
10 government's overall objectives are, you know, a  
11 sustainable financial services economy in  
12 British Columbia. AML is one component and we  
13 just elevated that to a point where it's not  
14 getting buried anywhere in the inherent risks of  
15 operational risk.

16 Q Mr. Elgar, would a completed version of one of  
17 these risk matrices, is that provided to the  
18 subject credit union, or is that an internal  
19 BCFS document?

20 A It is the actual -- what is provided to the  
21 institution would be a verbal depiction of some  
22 of these elements if we felt that there were  
23 concerns in any areas. Like if we filed under  
24 corporate governance, there's a simple example  
25 that senior management was not robust and

1           effective in the oversight of residential  
2           mortgage lending. We would in a supervisory  
3           letter relay those -- that information. We  
4           would make either recommendations or  
5           requirements to mitigate and correct that  
6           shortcoming. What is explicitly communicated to  
7           the institution is the composite risk rating  
8           which is down at the bottom, which is really the  
9           culminating [indiscernible]. Together with the  
10          stage rating, whether it's normal or there is an  
11          early warning, which actually indicates the  
12          level of intensity of ongoing monitoring, and  
13          the time frame in which that rating we expect to  
14          hold, whether it's six months, 12 months. And  
15          really what happens, Mr. Davis, is that the  
16          composite risk rating can change at any time  
17          during the year based on our review, our ongoing  
18          review of an institution and not only what's  
19          happening in the institution but also the  
20          external environment that impacts the  
21          institution.

22          Q     Thank you. And the reason I asked whether or  
23          not this is an internal is you indicated in one  
24          of your previous answers that one of the  
25          purposes or the effects of having AML as a

1            separate row item here is that it will increase  
2            awareness that it's something that BCFSA is  
3            paying particular attention to. Who does that  
4            increase the awareness of?

5            A    Well, this is a published document. There may  
6            not be -- there won't be ratings actually in it,  
7            but this is on our website or will be on it.  
8            This particular version will be with the revised  
9            supervisory framework, is on our website. We  
10           will as we move forward with the various  
11           advisories and the regulatory roadmap that we  
12           are bringing out, it is our intention to  
13           increase the engagement and awareness of the  
14           industry of what we're doing, where we're  
15           going -- when I say "we," I mean BCFSA -- and  
16           what we are looking at and what our expectations  
17           of industry are. We had recently hired a new  
18           executive position called sector liaison and  
19           that role is going to help us communicate not  
20           only what we expect of industry, but also ensure  
21           that we are understanding what some of the  
22           issues industry may be facing and the risk  
23           they're facing and concerns they have so that  
24           it's a much more collaborative and engagement  
25           going forward. I think it then is to the

1                   benefit of the entire system here in  
2                   British Columbia.

3           MR. DAVIS: Madam Registrar, if I could ask that you  
4           turn up -- and I'm sorry, I've lost the exhibit  
5           number. I thought I wrote it down. It's the  
6           May 5th, 2016 letter from Frank Chong.

7           THE REGISTRAR: Yes, exhibit 417.

8           MR. DAVIS: 417. Thank you, Madam Registrar. If you  
9           could please turn that up. Looking at the  
10          document again, Madam Registrar, if you could  
11          scroll down to the bottom of this page. I'm  
12          looking for the second paragraph. It's more of  
13          a sentence from the bottom. Thank you.

14          Q    Mr. Elgar, are you able to see the document  
15          before you?

16          A    Yes, I have -- I can, rather, yes.

17          Q    And I'll read that second-to-last sentence. It  
18          reads:

19                   "FICOM will continue to dedicate  
20                   heightened attention to FINTRAC  
21                   examination results of PRFIs in the  
22                   coming years to ensure all regulatory  
23                   compliance requirements are being met."

24          You see that sentence?

25          A    I do.

1 Q And appreciating again that you didn't author  
2 this letter, what is a PRFI?

3 A Oh, it is a provincially regulated financial  
4 institution.

5 Q So that could be a credit union, for example?

6 A Yes, actually. Yes, a credit union, a trust  
7 company, an insurance company.

8 Q And to your knowledge looking at this letter, do  
9 you know if FICOM was able to dedicate  
10 heightened attention to FINTRAC examination  
11 results?

12 A Well, I can -- I'm assuming they did, but I can  
13 certainly speak for the last 18, 19 months that  
14 I've been here. We continue to use those and I  
15 think I described that in earlier comments with  
16 regards to the biannual meeting -- excuse me,  
17 semi-annual meetings we have with FINTRAC where  
18 we receive their examination results and a  
19 listing of some of their deficiencies with  
20 credit unions that we supervise and we oversee,  
21 and we take that information and we use that  
22 when we do our own monitoring and ask questions  
23 about have the -- has the institution met the  
24 deficiency? Do they have a mitigation plan for  
25 that meeting, that deficiency that FINTRAC had

1 identified? If not, why not? What is the  
2 timing? So we are using that information such  
3 that the credit unions in this case example, are  
4 well aware that FINTRAC and ourselves are in  
5 communication, that we provide commentary to  
6 FINTRAC on what we might see in terms of policy  
7 maybe not updated in time or education programs  
8 not working. And FINTRAC provides us  
9 information on the more explicit things of their  
10 deficiencies they have identified. So the  
11 industry has been advised that this is  
12 collaborative between -- or there's cooperation  
13 between FINTRAC and BCFSA and that we do speak  
14 to each other and we're going to ensure that  
15 whatever shortcomings are rectified as soon as  
16 possible.

17 Q And BCFSA and FINTRAC share all of this  
18 information pursuant to a compliance memorandum  
19 of understanding; is that right?

20 A That is correct.

21 MR. DAVIS: Madam Registrar, if I could ask that you  
22 pull up FSA0012. It's a memorandum of  
23 understanding from the list of document, please.

24 Q Mr. Elgar, do you have the document in front of  
25 you?

1           A     I do. And I see it on the screen as well,  
2                     Mr. Davis.

3           Q     Thank you. And you recognize it as a memorandum  
4                     of understanding signed between FICOM and  
5                     FINTRAC in 2005?

6           A     That's correct.

7           MR. DAVIS: Mr. Commissioner, if I could ask that  
8                     this be marked as the next exhibit, please.

9           THE COMMISSIONER: Very well.

10          THE REGISTRAR: Next number is 419, Mr. Commissioner.

11                     **EXHIBIT 419: Memorandum of Understanding**  
12                     **January 9, 2005**

13          THE COMMISSIONER: Thank you.

14          MR. DAVIS: If we scroll down, Madam Registrar,  
15                     please, to page 5. It's the last page of this  
16                     document. If we could try to get it in frame  
17                     here, please.

18          Q     Mr. Elgar, this page is a transfer document,  
19                     which means that the memorandum of understanding  
20                     is still in full effect between FINTRAC and  
21                     BCFSA today; is that correct?

22          A     That is correct.

23          Q     And, Mr. Elgar, you've described it a little  
24                     bit, but maybe you could explain the information  
25                     that is shared from FINTRAC to BCFSA under this

1                   MOU. You've described compliance examination  
2                   results. I don't know if there's anything else.

3           A       Well, we also see from time to time statistical  
4                   information which is interesting and there is of  
5                   some value. It is more pertinent to the mandate  
6                   and the explicit oversight role FINTRAC plays.  
7                   But the -- we meet every -- the last physical  
8                   meeting we had with FINTRAC was in December of  
9                   2019. For obvious reasons with the pandemic  
10                  through 2020 we did not physically meet. In  
11                  fact FINTRAC suspended all review work through  
12                  the year. They just resumed that work towards  
13                  the end of last calendar year.

14                         We are expecting to meet with them again  
15                         later this spring, virtually at least, and at  
16                         that time we'll catch up as to what they have or  
17                         have not done and we'll exchange information.

18                         But in the packages we receive from FINTRAC  
19                         there is the notice letter, or what we call the  
20                         pre-exam letter. So a letter will be sent by  
21                         FINTRAC to a credit union advising them that  
22                         they intend to come do some onsite work and what  
23                         they're going to look at, the scope of what the  
24                         work will be, what they are going to look at.  
25                         They go onsite at that institution for whatever

1 period of time they've identified, and then some  
2 period after that they will send a findings  
3 letter. So it would basically say that, you  
4 know, XYZ credit union, we are onsite for these  
5 four or five days; the scope was this, and  
6 here's what we found. Good and bad. You know,  
7 here's our deficiencies we expect you to fix and  
8 there's an appendix; we'll give you the list.  
9 They will share that with us. We will take that  
10 information, and as I've said a moment ago, when  
11 we're looking at that credit union, whether it  
12 be part of our ongoing monitoring, continuous  
13 monitoring program or where they're actually  
14 going on site or doing now these days virtual  
15 reviews, desk reviews, we will ask those  
16 questions. Have you addressed this issue? If  
17 not, why not? And, you know, it becomes part of  
18 that ongoing followup that we have.

19 Now, what we will do is there may be an  
20 institution that we find that has some issues  
21 that we on the policies that haven't been  
22 updated or a training program hasn't been kept  
23 up to pace and that. We will share that also  
24 with FINTRAC, let them know. They tend to be --  
25 take note of this, but their primary focus is

1 much more on the adherence to the proceeds of  
2 crime and anti-money laundering act as opposed  
3 to more prudential issues that we're looking at.

4 Q Thank you. Maybe we could review one of those  
5 sets of data that has been provided by FINTRAC  
6 to BCFSA.

7 Madam Registrar, if I could ask that you  
8 pull up FSA0013. Should be titled "FICOM  
9 Reporting Statistics Updates: Fiscal Year  
10 2017-2018." From the list of documents please.  
11 Yes, that's it.

12 Mr. Elgar, are you familiar with this report  
13 provided by FICOM to FINTRAC regarding it's  
14 fiscal year 2017/2018 reporting statistics?

15 A Well, I've seen it in the package that I have in  
16 front of me. I wasn't here when we received it,  
17 but yes, so I know what in here, yes.

18 Q You're familiar with the document?

19 A Yeah, I'm familiar. Yes, I've had a chance to  
20 look through it, yes.

21 MR. DAVIS: Mr. Commissioner, if I could ask that  
22 this be marked as the next exhibit, please.

23 THE COMMISSIONER: 420.

24 THE REGISTRAR: Exhibit 420.

25 **EXHIBIT 420: FICOM - Reporting Statistics**

1                   **Update: Fiscal Year 2017-2018**

2           MR. DAVIS:

3           Q     Mr. Elgar, maybe having reviewed this document  
4                   can you describe for the Commissioner what it is  
5                   we're looking at here.

6           A     Well, as the report states, it's statistics. So  
7                   FINTRAC catches large cash transfers, suspicious  
8                   transfers and a number of other elements and  
9                   that data is collected and then aggregated to --  
10                  for FINTRAC reporting purposes. In the report  
11                  there's a number of pages. I think if you were  
12                  to scroll through you can see where they  
13                  actually provide data, but it's been redacted  
14                  where the credit union name has been removed.

15          Q     Yes.

16          A     But FINTRAC has actually that data. I'm looking  
17                  at -- I'm not sure what page it is in the book,  
18                  Mr. Davis, but there's a number of statistics  
19                  where they say the total number of large cash  
20                  transfers, 27,978. But I don't know which  
21                  credit union that is. But we know that one of  
22                  the larger credit unions would be having a lot  
23                  more transfer data. So that is really an  
24                  indication for FINTRAC to be looking well, what  
25                  are the processes in that? What kind of

1 automated systems do they have? Do they have  
2 controls in place? Are they capturing potential  
3 suspicious transactions appropriately? What is  
4 the mechanism the institution uses to identify  
5 that? Are the defining elements consistent to  
6 the expectations of the proceeds of crime and  
7 anti-money laundering act. And then it goes  
8 down, incrementally down. This is where you can  
9 see proportionality kick in. Some of the  
10 smallest credit unions have very, very few large  
11 transfers.

12 Q That's helpful, Mr. Elgar. I think we'll go  
13 through this a little more slowly if you don't  
14 mind.

15 Madam Registrar, if you could turn to page 3  
16 of the document, please.

17 Mr. Elgar, do you see this the slide, it's  
18 called "Examinations Conducted"?

19 A Yes.

20 Q And it looks like that FINTRAC conducted  
21 14 examinations of British Columbia-based credit  
22 unions in 2017/2018. Do you see that?

23 A I do see that, yes.

24 Q And you might have described this earlier, but  
25 what insight does BCFSA have into the specific

1 results of those examinations considering as you  
2 previously testified that this is more of a  
3 statistical document than anything else?

4 A Right. We receive a document that complements  
5 this which is really the -- and I'm trying to  
6 think of the exact name, forgive me. It's the  
7 compliance report where as I described the -- we  
8 get a copy of the examination letter and with  
9 all the content in there with regards to any  
10 deficiencies and observations noted. So in  
11 those 14 -- in that 14 exam count for 2017/2018  
12 there will be a complementary set of documents  
13 provided to us which has the narrative, if I can  
14 describe it that way, of the letters of the work  
15 that is done. We get a summary list that at any  
16 given year there might be 8 or 9, in this case  
17 9, 14 different institutions. We know which the  
18 names of those institutions and we see the  
19 supporting examination letters and details that  
20 FINTRAC have pulled together for that -- or from  
21 those reviews.

22 Q And this letter as you've noted, Mr. Elgar, it  
23 goes on to provide a number of statistics from  
24 the April 2017 to March 2018 fiscal year. I'm  
25 not going to take you through them all in the

1 interest of time, but I'd first like to ask,  
2 Mr. Elgar, is there anything that the  
3 Commissioner should have in mind as he looks at  
4 these sort of statistics that are provided, for  
5 example, deficiencies, that might be provided  
6 seemingly in the abstract? Is there anything  
7 about sample size or otherwise that you would  
8 have him consider as he looks through this  
9 report?

10 A In terms of sample size I'm not sure. I mean,  
11 every -- it really depends on the institution.  
12 Of those 14, as an example, if you have one or  
13 two larger credit unions, that might skew some  
14 of the statistical numbers if you're looking at  
15 them in isolation versus the smaller credit  
16 unions. And this is why, Mr. Davis, this is  
17 valuable or is valuable to understand the number  
18 of reviews done, but it is from a prudential,  
19 from my perspective and my accountability as a  
20 BCFSA, I need to know who it is because  
21 proportionality kicks in. If of those 14, 10 of  
22 them are the 10 smallest credit unions in  
23 British Columbia, that has a different bearing  
24 on what the expectations are from a prudential  
25 AML program. If it is ten largest and only four

1 of some others that has entirely different  
2 expectations. So the numbers themselves are  
3 important to know that they have done ten exams,  
4 but it's critically important from my  
5 perspective to understand who they're looking at  
6 and what are they finding there.

7 Q That's right.

8 Madam Registrar, if you don't mind scrolling  
9 to page 7 of the document, please.

10 Mr. Elgar -- sorry, Madam Registrar, if you  
11 could zoom out just a little bit, please. Zoom  
12 out. Yes, thank you.

13 Mr. Elgar, do you see this chart in front of  
14 you, the report submissions STR report volume?

15 A That's right, I see it, yes.

16 Q And can you tell the Commissioner what data is  
17 presented on this chart?

18 A Well, this is the suspicious transaction report.

19 So presumably you can see where it's been  
20 redacted, the name of the credit unions.

21 There's 5,664 suspicious transactions reported  
22 to FINTRAC between April '17 and March '18 and  
23 they're in descending order. So obviously there  
24 is a credit union listed beside each one of  
25 those rows of how many they've submitted to

1                   FINTRAC. So if you had the name and you see  
2                   that a very large credit union -- and for  
3                   illustration purposes only, Mr. Davis, I say  
4                   where it says 44, and if that turns out to be  
5                   the largest credit union in British Columbia and  
6                   they've only reported 44 STRs, that should raise  
7                   a question. It may not be wrong, but it should  
8                   raise a question. Similarly if one of the  
9                   smallest credit unions in British Columbia  
10                  reported 1,381 STRs, that would raise a  
11                  question.

12                                So the numbers themselves don't tell you  
13                                anything unless you can put it in a context as  
14                                to which credit union and what you're seeing  
15                                because now then you can go in and look and say  
16                                well, does that -- first of all intuitively does  
17                                it make sense, and secondly why are so many  
18                                being issued or conversely why are there so few?

19                  Q       And, Mr. Elgar, as you noted, we're missing some  
20                                important context here, namely the left most  
21                                column. To be clear, when BCFSA receives this  
22                                from FINTRAC does it have access to the column  
23                                on the left, the names of the credit unions?

24                  A       You know, I don't know because I haven't seen  
25                                any report other than this one that we're

1                   referring to. We receive the compliance report  
2                   which is the narratives, is the ones that I'm  
3                   familiar with.

4                   Q    Then if you don't know on this particular  
5                   document would it be fair to say that that  
6                   information for the reasons you've just  
7                   described i.e., the prudential risk analysis, it  
8                   would be useful for BCFSA to know which credit  
9                   union filed how many STRs?

10                  A    It could be, but again from a prudential point  
11                  of view if we know the credit union has put in  
12                  whatever the number is from -- again, I'm not  
13                  there looking at the mechanics of how many STRs  
14                  or large value or large cash transfers are  
15                  putting through. Prudentially I want to ensure  
16                  that they have the tools in place to ensure that  
17                  they can capture the large value -- or the cash  
18                  transfers or the STRs. Whether they are  
19                  accounting and reporting 15 or 50 prudentially  
20                  we want to ensure that they have a program in  
21                  place that they can capture any of them. Does  
22                  that make sense? I'm not sure if I'm  
23                  articulating that clearly.

24                  Q    It does make sense. If I can clarify. Are you  
25                  saying that say, for example, the largest credit

1 union had for some reason filed zero STRs,  
2 you're not so much concerned with the reason  
3 they filed STRs but just that they have the  
4 appropriate policies, procedures and mechanisms  
5 in place to do so if it's necessary. Is that  
6 fair?

7 A That is fair, but by the same token when we're  
8 doing our review, Mr. Davis, and we are looking  
9 at the policies, the training the CAMLO,  
10 et cetera, we will look to see what they're  
11 reporting. What FINTRAC will come in and  
12 actually review of those 40 or 50, whatever the  
13 number STRs they report, have they missed any  
14 when FINTRAC goes through the files. I won't  
15 look at that. I don't go through the files and  
16 see whether or not they have missed any STRs.  
17 That's the point I'm trying to make. FINTRAC  
18 does.

19 Q Okay. That does make sense. Thank you.

20 Madam Registrar, if we could go to page 12  
21 of this document, please.

22 Mr. Elgar, very much appreciating the  
23 comment that you just made that you are not  
24 necessarily diving to statistics, we see here on  
25 this page that in 2015/2016 nearly 89 percent of

1 credit unions examined in British Columbia were  
2 partially deficient with respect to policies and  
3 procedures, and that number is wrong. The  
4 following year it's 67 percent, in 2016/2017.  
5 Do you see that?

6 A I've got to put my glasses on. Forgive me.

7 Q No, not at all. Take your time.

8 A There we go. So if we're looking at 2015/2016  
9 you are right, approximately 89 percent and it  
10 improved to 2016/2017.

11 Q And it's continued to improve. For the record  
12 it's dropped now to 14.3 percent or partially  
13 deficient. Is that what you see as well?

14 A Yes, I think we've seen generally in the work  
15 that we've done, you know, by way of context,  
16 Mr. Davis, in 2019/20 we did 22 different  
17 reviews. BCFSA. Of our own type of reviews,  
18 prudential reviews. And generally we've seen an  
19 improvement and a greater awareness of the  
20 importance of maintaining these policies,  
21 maintaining the processes, maintaining the  
22 procedures: now, of those 22 reviews not every  
23 single one of them focused exclusively -- or  
24 focused on AML. Some of them were very narrow  
25 and targeted, would only be an IT review or

1 something like that. But the point I'm trying  
2 to share with you is that we've noticed a  
3 similar general appreciation and an awareness of  
4 the importance of maintaining rigorous  
5 governance and risk management across the board  
6 and AML is benefitting from that as well. It's  
7 not just explicitly AML, but we've seen an  
8 improvement in credit risk management, liquidity  
9 management, operational risk management, and AML  
10 is also evident from the statistics you have in  
11 front of you have improved as well.

12 Q Thank you. That is helpful. Mr. Elgar, you've  
13 explained it I think briefly, but can you  
14 explain to the Commissioner what BCFSA does with  
15 this sort of information.

16 So you know, for example, if we turn, Madam  
17 Registrar -- sorry, I've lost my screen here.  
18 If we turn to page 13 of the PDF, please, the  
19 risk-based assessment.

20 Mr. Elgar, do you see here now having your  
21 glasses that in 2017/2018 that in  
22 British Columbia 7.1 percent of credit unions  
23 had a complete deficiency when it comes to their  
24 risk-based assessment?

25 A Yes. Now, the risk-based assessment is that --

1                   this is the FINTRAC definition of the risk-based  
2                   assessment. And to be honest I'm not completely  
3                   conversant with all the details therein, but it  
4                   begs the question, you know, why between 2015/16  
5                   and 2017/18 did those 7.1 emerge? If I'm  
6                   looking at this correctly.

7                   Q     I was hoping you can --

8                   A     What does that represent?

9                   Q     Can I ask you that very question? Do you know  
10                  what that represents or what's occurred here?

11                  A     No, I don't know. It's an interesting -- it's  
12                  interesting to see because you would -- if on  
13                  the prior statement or the page we were looking  
14                  at we saw a marked improvement.

15                  Q     That's right.

16                                 Madam Registrar, if we could go back to  
17                                 page 12, please. Thank you.

18                                 Sorry, Mr. Elgar, you were saying and now we  
19                                 have?

20                  A     Well, when you're looking here, compliance and  
21                  that, you know, we went from 89 percent. We've  
22                  seen a marked improvement, right, in terms of  
23                  issues. You know, it was 11.1 percent in  
24                  policies and procedures, if I'm reading this  
25                  correctly, policies and procedures deficiencies

1                   in 2015 there were -- there was only  
2                   11.1 percent that were compliant. And then we  
3                   saw an improvement to 2016/17 where a third of  
4                   them were compliant. So a marked improvement in  
5                   compliance.

6                   Q    And, Mr. Elgar, does in your experience, does  
7                   FINTRAC indicate to BCFSA why these changes have  
8                   occurred or it's kind of hypothesis as to why  
9                   these changes occur?

10                  A    I haven't been party to any conversations with  
11                   FINTRAC on that other than the explicit  
12                   discussions we've had about credit unions  
13                   generally. This is an aggregate element, so I  
14                   haven't had those conversations with FINTRAC.

15                  Q    And, Mr. Elgar, you mentioned that BCFSA has  
16                   received from FINTRAC a more recent document  
17                   that speaks to compliance examination results;  
18                   is that right?

19                  A    Yes.

20                  MR. DAVIS: Mr. Commissioner, before I ask Madam  
21                   Registrar to display this document for the  
22                   hearing, I seek your direction that it not be  
23                   webcast. Assuming it's marked as an exhibit,  
24                   I'd also seek that it not be posted to the  
25                   website for a brief period of time, and the

1                   reason for that, Mr. Commissioner, is counsel  
2                   for Canada are going to seek to propose further  
3                   redactions to the document, so again I'd ask  
4                   that it not be displayed or posted until that is  
5                   resolved.

6                   THE COMMISSIONER: All right. That's fine. I'll  
7                   make that direction then.

8                   MR. DAVIS: Thank you, Mr. Commissioner.

9                                   Madam Registrar, if I could ask that you now  
10                   pull up the document FSA0019 from the list of  
11                   documents, please. Thank you.

12                   Q    Mr. Elgar, do you recognize this as an  
13                   October 30th, 2019 report on compliance  
14                   examinations that was provided by FINTRAC to the  
15                   BCFSA?

16                   A    Yes, I do.

17                   MR. DAVIS: Mr. Commissioner, if I could ask that  
18                   this be marked as I believe exhibit 421, please.

19                   THE COMMISSIONER: Very well.

20                   THE REGISTRAR: Exhibit 421.

21                                   **EXHIBIT 421: FINTRAC ComPack**

22                   MR. DAVIS:

23                   Q    Mr. Elgar, the first thing that strikes me  
24                   looking at this record is that it's if in a  
25                   different format and communicates different data

1                   than the previous report, the report we  
2                   previously went through. Is that fair?

3           A       That is fair. The previous report was  
4                   statistics. This is the actual communications  
5                   to the institutions.

6           Q       And I took it from your evidence earlier that  
7                   BCFSA receives both versions, so the document we  
8                   went through previous, it would have this and  
9                   the version of that document for 2019/2020  
10                  through FINTRAC?

11          A       I haven't seen the statistical one that we just  
12                  referred to. I have not seen the 2018/19  
13                  version because that was '17/18 I believe. So,  
14                  you know, I have not seen it. And I have to be  
15                  very honest that it may be filed, but I have not  
16                  seen it. I'm not aware of it. I am aware of  
17                  the continuous receipt of the document we have  
18                  in front of me or the type of document you have  
19                  in front of us today is the narrative rather  
20                  than the statistical analysis.

21          Q       Well, and if we look at this document on page 1  
22                  I see a table 1 there called "Compliance  
23                  Examinations Completed For the 2019/2020 Fiscal  
24                  Year." Do you see that table?

25          A       Yes, I do.

1           Q     It looks like, Mr. Elgar, within that table  
2                   there are four rows. Do you see those four  
3                   rows?

4           A     Yes, those would be the name of the credit  
5                   unions. And I think it probably goes over the  
6                   next page as well. I'm not sure. And on that  
7                   particular document there would be four credit  
8                   unions named, and in the package that we would  
9                   receive obviously is in name of the credit  
10                  unions but also a copy of the notification  
11                  letter, which as I described the FINTRAC  
12                  pre-exam letter to the institution, and then  
13                  subsequent to their review there would be a  
14                  findings letter that FINTRAC sends to the  
15                  institution which is attached and then  
16                  confirming the dates of the exam.

17          Q     Right. And looking at this table here. We've  
18                  discussed four rows. To your knowledge does  
19                  that mean that FINTRAC completed four total  
20                  examinations of BC-based credit unions in  
21                  2019/2020? Is that what we can take from this  
22                  table?

23          A     You can take from that on that particular  
24                  document, but we would meet every six months so  
25                  there could be there a -- there would have been

1                    maybe a letter. This is October, I believe,  
2                    dated. There should be one maybe in March or  
3                    April where it might have another list, so  
4                    expending on the calendar year it's probably  
5                    overlapping. I've seen these letters,  
6                    Mr. Davis, where there are more than four rows  
7                    and actually subsequent to that saying where it  
8                    says comments "previously sent, previously sent,  
9                    enclosed, enclosed," the comments are still  
10                   pending. So we see that they have identified an  
11                   institution to which a notification letter has  
12                   been sent, a finding letter hasn't been sent  
13                   because they haven't finished the exam yet.

14                   Q    So are you aware then of whether or not FINTRAC  
15                   conducted more than four examinations in  
16                   2019/2020? Or what does BCFSA know about that  
17                   because I only see four here so maybe you can  
18                   tell the Commissioner what else you know about  
19                   that?

20                   A    Well, I could actually pull -- I have some  
21                   information that I could -- you know, more  
22                   updated version on this one. This is  
23                   October 2019. We would have received a letter  
24                   in the spring of 2020 which would have been a  
25                   little more fulsome that might be able to --

1                   without looking at that letter. I don't have it  
2                   in front of me, of course. It would probably  
3                   give us more detail as to who and what FINTRAC  
4                   had done. But bear in mind, Mr. Davis, FINTRAC  
5                   had not done any work from March of 2020 until  
6                   December of -- well to date. They haven't done  
7                   any work or any examination work. They  
8                   completely shut down that work due to the COVID.

9                   Q    Do you know if that -- because this is the  
10                   2019/2020 fiscal year. Do you know what that  
11                   fiscal year -- what constitutes a fiscal year  
12                   for this chart?

13                   A    I would assume that -- I'm assuming it's the  
14                   federal government would be April 1st to  
15                   March 31st.

16                   Q    Okay. Well, appreciating that we haven't yet  
17                   seen the more fulsome document that you've  
18                   described I'm not quite sure how to approach  
19                   this. So maybe I'd ask what you can tell the  
20                   Commissioner about the more updated information  
21                   you've got from FINTRAC?

22                   A    I think I might have it. I have it in my  
23                   briefcase. I'm not sure what are you --

24                   Q    Well, you know, I'm trying to get, I mean, this  
25                   is the most recent document the commission

1                   counsel have seen, you know, and I've asked you  
2                   whether or not to your knowledge that four  
3                   compliance examinations were completed for the  
4                   2019/2020 fiscal year. I'm not looking for any  
5                   specifics from the letter, appreciating that  
6                   there are redactions to this one. I don't want  
7                   any names or dates, phone numbers, anything.

8                   A    Yeah, yeah.

9                   Q    But what is the picture painted by this newer  
10                  document?

11                  A    Well, there's more than four names listed in  
12                  that document, and I think, Mr. Davis, the  
13                  important date is what are the dates on that  
14                  list because as you can see, this is a continuum  
15                  when you look at the column under "Comments."  
16                  So on that October letter, October 30th letter,  
17                  there will only be two of those four rows with  
18                  any enclosures. The other information would  
19                  have been sent previously to us.

20                  Q    And how many entities does your new letter show  
21                  for examinations completed for the 2019/2020  
22                  fiscal year?

23                  MS. HARLINGTON: Mr. Commissioner, apologies for  
24                  interrupting my friend's examination, but I  
25                  wonder if it might be fair to the witness for

1                   them to be able to have the document in front of  
2                   them to answer the questions.

3           THE COMMISSIONER: Yes, from his briefcase, you mean.

4           MS. HARLINGTON: Yes, Mr. Commissioner.

5           THE COMMISSIONER: Yes, absolutely.

6           THE WITNESS: Excuse me.

7           MR. DAVIS: Thanks, to my friend.

8           MR. BRONGERS: Excuse me, Mr. Commissioner.

9                   Jan Brongers for the Government of Canada. I'm  
10                  just a little bit concerned about the way this  
11                  document disclosure process is taking place.  
12                  Ordinarily we get advance notice of disclosure  
13                  so that we can be alive to potential concerns  
14                  about sensitive information, so I just think we  
15                  have to tread very, very carefully with this  
16                  being given sort of a surprise document in this  
17                  way.

18          THE COMMISSIONER: Yes. Absolutely. I don't think  
19                  Mr. Davis is asking for any substantive  
20                  information from the document apart from how  
21                  many other examinations were conducted by  
22                  FINTRAC during the April 1st, 2019 to  
23                  March 31st, 2020 fiscal year. Is that correct,  
24                  Mr. Davis?

25          MR. DAVIS: That's correct, Mr. Commissioner. Thank

1                   you.

2           THE COMMISSIONER: Yes. So I don't think that would  
3                   infringe any issue with respect to redactions,  
4                   Mr. Brongers, but you tell me if that raises any  
5                   concern.

6           MR. BRONGERS: No, that's fine. If the question is  
7                   just being posed verbally, that's fine, and we  
8                   don't actually get into the content of the  
9                   document, I have no concerns. Thank you.

10          THE COMMISSIONER: Very well. Thank you.

11          THE WITNESS: To answer the question, a number.

12          MR. DAVIS:

13          Q     Yes, please.

14          A     There were nine, not four.

15          Q     There were nine not four. And, Mr. Elgar, if  
16                   you take your eyes back to the screen.

17                   And, Madam Registrar, if I could ask that  
18                   you go to the next page of the document you are  
19                   displaying now.

20                   Do you see this table 2, Mr. Elgar,  
21                   "compliance examinations in progress or to be  
22                   conducted"?

23          A     Yes.

24          Q     Can you confirm whether or not the names in your  
25                   more recent letter that's in your hands, are all

1                   of those contained in this table here or are  
2                   there additional names?

3           A       Well, when I suggested nine, there are four on  
4                   this table that I'm looking at. Now, the letter  
5                   I'm looking at, you know, as I say has when I  
6                   count the lines, there's nine of them, not just  
7                   the four that you have from the example in front  
8                   of us.

9           Q       Right. And, Mr. Elgar, appreciating there's  
10                   four on table 1, you can see that table 2 is a  
11                   little more complicated to make sense of from my  
12                   perspective. We've got organizations and  
13                   examination dates. I mean, I could -- it's a  
14                   little tough to tell there how many entities  
15                   were their examinations were in progress or  
16                   being conducted in the year, and I'm trying to  
17                   get a sense of in your newer letter does it  
18                   encompass all of the entities in this letter on  
19                   the screen or are there additional ones that  
20                   have been added? Again, please, no names, no  
21                   specifics, but I'm just trying to a get a sense  
22                   of, you know, after you got this October 30th,  
23                   2019 letter, you have four entities in table 1  
24                   and a number in table 2. How many additional  
25                   entities were added in your new document?

1           A     Well, there would be 5.  If there's 9 in total  
2                    there would be 5.  Because I've counted both  
3                    table 1 and table 2.

4           Q     Okay.  And you read -- okay.

5           A     Because table 2 is examine in progress or to be  
6                    completed in the fiscal 2019/2020.

7           Q     Okay.  Well, thank you very much.

8           A     So table 1 is just those that have been  
9                    completed, and table 2 articulates which are in  
10                   progress or to be completed, so for the fiscal  
11                   year that's where the nine comes in.

12          Q     Thank you, Mr. Elgar.  That's very helpful.

13                    Madam Registrar, if we could scroll to  
14                    page 3 of this document, please.

15                    Mr. Elgar, you had described earlier that  
16                    FINTRAC sends to BC-based credit unions kind of  
17                    a notice letter that they are going to come and  
18                    conduct an examination.  Does this look like one  
19                    of those notices to you?

20          A     Yes, it does.

21          MR. DAVIS:  Thank you.

22                    Madam Registrar, if we could scroll to  
23                    page 8 of this document.

24          Q     Mr. Elgar, do you see that in front of you  
25                    there?

1           A     Yes.

2           Q     It looks like this is is a copy of a findings  
3                   letter issued by FINTRAC to a financial  
4                   institution that underwent an examination from  
5                   October 2018 until March 2019; is that right?

6           A     Yes, I can see that.

7           Q     And having presumably reviewed this document,  
8                   what can you tell the Commissioner about the  
9                   findings in this examination letter?

10          A     Well, I mean, if you look at the examination  
11                   summary it outlines the deficiencies that will  
12                   be identified more clearly in appendix 1 and the  
13                   fact that they have to take immediate action.  
14                   There should be a response from the institution  
15                   back to FINTRAC indicating the timeline and the  
16                   efforts that are going to be made over the -- to  
17                   rectify those various deficiencies, and those  
18                   are the elements that we follow up with as I've  
19                   testified before earlier when we talk to that  
20                   institution. Because we'll know who the  
21                   institution is because we receive this  
22                   unredacted and use this information to pursue as  
23                   part of our own continuous monitoring or review  
24                   work from a prudential point of view that the  
25                   institution is it meeting FINTRAC's

1 requirements.

2 Q And does BCFSA receive copies of those action  
3 plan that are sent from credit unions to  
4 FINTRAC?

5 A No, we are not copied on that, but we follow up  
6 with them, as I've said, Mr. Davis, and ask them  
7 as to the status and things like that. The --  
8 you know, the actual action items may be --  
9 verification of that may be deferred and every  
10 case is different. But FINTRAC as it states in  
11 this letter that they're going to consider a  
12 followup exam to ensure the progress has been  
13 made. Depending on the deficiencies they may  
14 say, we're going to come back in six months and  
15 check, or we're going to come back in a year and  
16 check. So it really depends on, like in this  
17 particular case I don't think they are  
18 identifying when they're going to come back to  
19 make sure that the deficiencies have been  
20 corrected.

21 Q Okay. If we scroll to page 30 of the document,  
22 Madam Registrar, please.

23 Mr. Elgar, is this another findings letter  
24 for the second enclosed examination you see  
25 here?

1           A     Well, the dates are different but the title  
2                   "manager, risk management" is different than the  
3                   other one, so I'm assuming it's a different  
4                   letter, yes.

5           Q     Okay. I just wanted to note that for the  
6                   record.

7                   Madam Registrar, thank you. I don't need  
8                   that document displayed any longer, but I will  
9                   ask that you pull up BCFSA advisory number  
10                  RE-20-002 from the list of documents, please.

11          THE REGISTRAR: Sorry, Mr. Davis. Can you give me  
12                  the title of that document. I don't have the --

13          MR. DAVIS: It's sorry, I've got "005 BCFSA advisory  
14                  number re-20-002," and then it's "-2020/2021  
15                  regulatory roadmap.pdf."

16          THE WITNESS: It's November 5th, 2020, I think is the  
17                  date of the document.

18          MR. DAVIS: That's correct. Thank you, Mr. Elgar.

19                  Yes, perfect. Thank you, Madam Registrar.

20          Q     Mr. Elgar, do you recognize this as an advisory  
21                  issued November 5th, 2020, by the BCFSA to all  
22                  regulated entities regarding the BCFSA  
23                  regulatory roadmap?

24          A     Yes, I do.

25          MR. DAVIS: Mr. Commissioner, if I could ask that

1                   this be marked as exhibit 422, please.

2           THE COMMISSIONER: Very well.

3           THE REGISTRAR: Exhibit 422.

4                   **EXHIBIT 422: BCSFA Advisory Number re 20-002**  
5                   **2020/2021 Regulatory Roadmap dated November 5,**  
6                   **2020**

7           MR. DAVIS:

8           Q     Mr. Elgar, I planned to spend a bit more time on  
9                   this, but in the interests of time what can you  
10                  tell the Commissioner about the degree to which  
11                  this roadmap encompasses anti-money laundering?

12          A     If you actually were to look at the -- I think  
13                  you have the contents on there, anti-money  
14                  laundering itself to my recollection is not  
15                  explicitly outlined in here. What this  
16                  particular roadmap is is the regulatory -- as  
17                  part of our going back to our original service  
18                  plan and our mandate is to enhance the  
19                  engagement with industry, we are providing an  
20                  indication to our stakeholders of the work we  
21                  are planning to do and the work with regards to  
22                  issuing either guidance or some other regulatory  
23                  statement pertaining to which we will apply for  
24                  the upcoming year. So we have an advisory on  
25                  reporting templates for credit unions. We have

1 an advisory that we're going to be issuing a  
2 guideline on outsourcing. And that will be  
3 under consultation as I indicated earlier.  
4 Similarly with information security. There are  
5 a number of elements with regards to regulatory  
6 statements and pieces for the pension plans,  
7 various regulated pensions. So the roadmap  
8 itself is not a definitive document. It is an  
9 indication to industry. This is why it goes out  
10 as an advisory. It's a communications to  
11 industry, this is what we are planning to do  
12 going forward. It is something that hasn't been  
13 done before in FICOM. It is again a new  
14 initiative that has been introduced as we are  
15 moving through the evolution of BCFSA to improve  
16 engagement and communications with industry.

17 Q And on that forward-looking note, Mr. Elgar,  
18 what can you tell the Commissioner about the  
19 relatively new authority that was afforded to  
20 the BCFSA under the *Financial Institutions Act*  
21 to make rules?

22 A We have been given under the *FIA* the ability to  
23 make a rule which will have the same legal force  
24 as an act or a regulation passed by parliament.  
25 It is not a unilateral rule. It is one where we

1           have to propose it, go through consultation with  
2           industry, get concurrence and then defer to the  
3           minister of finance for approval. But it is  
4           more expeditious to have rule-making authority  
5           rather than trying to change legislation and/or  
6           various acts. It's just a way to respond more  
7           quickly and more effectively in different  
8           circumstances.

9           Q    Are there any rules in force yet?

10          A    No, we have not issued a rule yet.

11          Q    To what degree does BCFSA have plans to make  
12               rules with an anti-money laundering component?

13          A    I don't have an answer to that, Mr. Davis. I  
14               mean, I think the opportunity to make rules will  
15               be determined by various circumstances. With  
16               regards to anti-money laundering, we do not have  
17               a clear mandate yet as to what our role is to be  
18               in anti-money laundering and once that is  
19               determined, you know, then there may be an  
20               opportunity, but at this point I don't have an  
21               indication as to anti-money laundering being  
22               made via rule or a rule pertaining to anti-money  
23               laundering.

24          Q    Maybe as the final area of discussion, then, we  
25               can briefly discuss the forward-looking roadmap



1                   team with the necessary skills and  
2                   experience is fundamental to the BCFSA's  
3                   ability to achieve its objectives. As  
4                   FICOM experienced staffing challenges in  
5                   the past, we anticipate that the  
6                   transition to a Crown agency will bring an  
7                   updated suite of recruitment and retention  
8                   strategies to assist in meeting human  
9                   resource challenges."

10                  To your knowledge what were those staffing and  
11                  human resourcing challenges that FICOM was  
12                  subject to?

13                  A    From what I understand, Mr. Davis, is that there  
14                  were perennial vacancies in a number of areas  
15                  across the organization, supervision and  
16                  regulation in the pensions area and market  
17                  conduct, corporate services, and there was a  
18                  challenge in bringing and there was a turnover  
19                  issue. I can say that in the last 18 months  
20                  that BCFSA has stabilized it's vacancy rate  
21                  from, you know, somewhere around 30 percent down  
22                  to single digits. I think we're about 7 or  
23                  8 percent. So we've been able to bring in a  
24                  number of individuals which have been -- and  
25                  diversify some of the skill sets that we brought

1 forward on to our various teams. So I think  
2 we've made some good progress. We're not at end  
3 of job yet. And I think the key issue here in  
4 making sure we have experienced staff and  
5 bringing in the right individuals, we have to --  
6 "we" being BCFSA, we have to understand what is  
7 the environment in which we're dealing, what are  
8 the challenges facing us, what are the risks we  
9 need to address going forward and find the skill  
10 set commensurate to help us deal with those.

11 Q This was planned as kind of more of a conclusory  
12 question, Mr. Elgar, but you know, considering  
13 you mentioned that AML is now a goal and it's an  
14 increasing priority. Is BCFSA staffed or does  
15 it currently have capacity to take on an  
16 increased anti-money laundering role, or would  
17 it need additional resources and staff to do  
18 that?

19 A Well, I think some of our key capabilities can  
20 be leveraged in the current environment,  
21 Mr. Davis. We have five individuals who have  
22 the -- have or are working towards completing  
23 this year the, what is it, the ACMAS [sic],  
24 which is the accreditation for anti-money  
25 laundering services. There is -- forgive me,

1                   the acronym, the full definition of the acronym  
2                   escapes me. But it is a recognized designation  
3                   for anti-money laundering specialists. We've  
4                   got five of those --

5                   Q     Is that ACAMS?

6                   A     ACAMS, yeah. That's right. The association or  
7                   accreditation of anti-money laundering  
8                   specialists. So there's five individuals.  
9                   We've actually been recruiting. In my  
10                  department we hired two individuals at the end  
11                  of last calendar year as a normal course and  
12                  that was one of the skill sets we were looking  
13                  for, to complement the existing skill sets we  
14                  have with, you know, IT risk management or  
15                  operational risk, certainly credit expertise in  
16                  residential commercial lending. We need people  
17                  to have treasury experience. When we're going  
18                  to these financial institutions you have to  
19                  understand what the business they're doing to be  
20                  able to assess the risks therein. Similarly  
21                  with AML you have to have people who have a much  
22                  more deep understanding of the anti-money  
23                  laundering regimes and some of the issues  
24                  associated with that when you're doing your  
25                  assessment. So I think from a capacity point of

1 view these capabilities can be leveraged.  
2 Depending what mandate we are given by the  
3 government and the expectations therein there  
4 will be an opportunity to reassess our resources  
5 and whether or not we'll get the funding to  
6 expand that. At this point I'm not familiar and  
7 I have no view as to what that mandate will look  
8 like, but we will continue to support and do  
9 whatever we are instructed to do and suggested  
10 be done by the government.

11 Q Right. And, Madam Registrar, if I could ask  
12 that you scroll down to page 16 of this  
13 document, please.

14 Mr. Elgar, the last questions I'm going to  
15 ask you are based on the pages here, and we see  
16 on page 16 objective 5.1(b). Do you see that?

17 A Yeah. Yes, I do.

18 Q And that objective reads --

19 Sorry, Madam Registrar, if you don't mind  
20 scrolling to the top. I was referring to the  
21 portion right at the top there. Thank you.

22 "Independently identify and implement  
23 opportunities for the BCFSA to strengthen  
24 its role within the current, integrated  
25 AML regime."

1 Do you see that?

2 A That's right, I have. Or I do.

3 Q Thank you. And what's been identified so far?

4 A Well, if you look at performance measures in  
5 that box where it says 5.1(b) the second one.

6 "Number of opportunities to strengthen our  
7 role identified and implemented."

8 So our target for the year baseline is  
9 10 opportunities. I just gave you an example  
10 whereby we hired two more individuals at the end  
11 of calendar year 2020 as an indicator. We've  
12 invested in training for some of our other staff  
13 members in AML explicitly. We've been working  
14 with mandate discussions with our board and  
15 ministry of finance staff as to what that  
16 potential could be from a government. We've  
17 elevated our supervisory approaches towards AML.  
18 Again, if you recall, Mr. Davis, when we were  
19 looking at the risk matrix I indicated that that  
20 is what's going to be proposed to the revised  
21 and updated supervisory framework. That started  
22 in 2020. We've -- again repeating myself, but  
23 we elevated around the work around AML because  
24 it was placed in our 2021 mandate, so engaging  
25 and helping the government work towards. Those

1                   are some explicit examples. There's work done  
2                   in the market conduct area where there's more  
3                   training in the market conduct and one of my  
4                   colleagues when he is here with the commission  
5                   will be able to explain that more completely.

6                   So you know, we recognize that it is coming.  
7                   We don't know what form and what the depth of it  
8                   going forward, but there are a number of things  
9                   that we can address today and that's what this  
10                  particular 5.1(b) is suggesting for us as BCFSA  
11                  to work towards.

12                Q    And looking at the bullets under 5.1(b) if we  
13                    look at the two bottom sub-bullet points there.  
14                    And I'll read them. One of them reads:

15                                "Continue to support suspected money  
16                                laundering activities to relevant  
17                                partners."

18                    And the second bullet reads:

19                                "Increased interactions with AML partners  
20                                on a bilateral and multilateral basis."

21                    Do you see those two bullet points?

22                    A    I do.

23                    Q    To what degree does the BCFSA currently interact  
24                    with the RCMP or police of jurisdiction on  
25                    anti-money laundering matters?

1           A     In my area we have not had any dealing with  
2                    police or RCMP in that area.  Our relationship  
3                    on a bilateral, multilateral basis has been  
4                    primarily with FINTRAC.  With regards to the  
5                    prior bullet -- you know, interactions with, we  
6                    do share information as I said earlier in  
7                    testimony with FINTRAC of some of our findings  
8                    and it doesn't necessarily mean suspected money  
9                    laundering, but if there are deficiencies in  
10                   areas that we believe FINTRAC should be aware of  
11                   given their mandate, we'll share that -- we have  
12                   shared that information directly with them.

13           Q     Thank you.  And, Mr. Elgar, my final question is  
14                    whether you're aware of whether or not your  
15                    provincial counterparts, so the BCFSA in  
16                    Alberta, in Ontario, do they all take a similar  
17                    approach to how they deal with AML in the scope  
18                    of their kind of prudential risk assessments?

19           A     It's -- you know, I can only answer that  
20                    anecdotally insofar as BCFSA is a member of the  
21                    Credit Union Prudential Supervisors Association,  
22                    which is CUPSA, and we have discussed a number  
23                    of issues at CUPSA and it's not just -- and AML  
24                    is one of them.  But I cannot comment with any  
25                    informed opinion whether or not Alberta or what

1                    Alberta or Saskatchewan or Ontario does with  
2                    regards to AML, but I know generally they are  
3                    all aware of it and they are all cognizant of  
4                    the need to either elevate or to focus on AML in  
5                    some form.

6                    MR. DAVIS: Thank you, Mr. Elgar, for your time  
7                    today. Mr. Commissioner, those are my questions  
8                    for this witness. I appreciate we've got two  
9                    participants who intend to ask questions of  
10                   Mr. Elgar.

11                   THE COMMISSIONER: Yes, all right. Maybe I can just  
12                   canvass, Mr. Rauch-Davis, you have 15 minutes.  
13                   Ms. Harlingten, 10 minutes. Do you wish to  
14                   proceed at this point or take a brief  
15                   adjournment first?

16                   MR. RAUCH-DAVIS: Mr. Commissioner, I'm ready to go  
17                   at this point but I recognize the witness and  
18                   participants may wish to have a break.

19                   THE COMMISSIONER: Yeah, I think actually -- and,  
20                   Ms. Harlingten, you plan to take ten minutes; is  
21                   that right?

22                   MS. HARLINGTEN: Yes, Mr. Commissioner, I have a few  
23                   questions, but if Mr. Elgar needs a break  
24                   perhaps now would be a good time to take one.

25                   THE COMMISSIONER: I think it is and we will take

1 15 minutes. Thank you.

2 THE REGISTRAR: The hearing is adjourned for a  
3 15-minute recess until 11:36 a.m. Please mute  
4 your mic and turn off your video. Thank you.

5 **(WITNESS STOOD DOWN)**

6 **(PROCEEDINGS ADJOURNED AT 11:21 A.M.)**

7 **(PROCEEDINGS RECONVENED AT 11:36 A.M.)**

8 **CHRISTOPHER ELGAR, for**  
9 **the commission,**  
10 **recalled.**

11 THE REGISTRAR: Thank you for waiting. The hearing  
12 is now resumed. Mr. Commissioner.

13 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
14 Mr. Rauch-Davis.

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

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

17 Q Mr. Elgar, I take it that financial institutions  
18 under the BCFSa have certain beneficial  
19 ownership and know your client transparency  
20 obligations for their corporate clients?

21 A Yes.

22 Q Yes. So this commission has heard some evidence  
23 on the role of -- or on the potential role of  
24 the beneficial ownership registry and what that  
25 might -- how that might affect certain

1 industries. So I'm wondering if in your opinion  
2 a publicly available beneficial ownership  
3 registry would that assist financial  
4 institutions in meeting those obligations?

5 A I don't have -- I'm not really familiar with all  
6 the details of the registry and so whether or  
7 not it would provide a benefit, it's difficult  
8 for me to -- I don't have enough information to  
9 provide an opinion or comment.

10 Q Okay. Thank you, Mr. Elgar. So you've also  
11 given some evidence about information sharing  
12 with FINTRAC, and I believe with my friend  
13 Mr. Davis just recently your evidence was  
14 something along the lines of BCFSA is interested  
15 in understanding more of the challenges facing  
16 us and what are the risk moving forward on the  
17 AML front. So my question is does FINTRAC  
18 provide BCFSA with any direction or priorities  
19 or specific areas of interest that would allow  
20 BCFSA to create or amend their AML policies?

21 A Well, first of all, the first part of your  
22 comments with regards to understanding the  
23 risks, it's broader than just AML. That was in  
24 reference to the broader engagement with  
25 industry and the communications with regards to

1           advisories and pieces. The second part of your  
2           question, though, with regard to FINTRAC, the  
3           only information we receive in the conversation,  
4           we don't receive direction and we do not receive  
5           a list of priorities for us to investigate.  
6           What we'll do is receive their examination  
7           letters, look at the deficiencies, have those  
8           discussed explicitly because they have already  
9           been shared with the institution and then we'll  
10          follow up with the institution as part of our  
11          regular monitoring and/or potential reviews that  
12          we do. So we don't get direction and we don't  
13          get particular instructions from FINTRAC at all,  
14          although we do have conversations and  
15          discussions with them, you know, generally what  
16          is going on in the market here in  
17          British Columbia that we see and what they might  
18          see.

19           Q     And I take it from your evidence this morning  
20           that it was on a time to time basis that you  
21           received this data; I believe it was every six  
22           months you receive the letter that Mr. Davis  
23           referenced earlier.

24           A     That's correct. I mean, 2020 is a bit of an  
25           anomaly for obvious reasons. We didn't receive

1 anything through 2020; we just got some  
2 information at the end of the year. But we're  
3 hoping to resume that regular dialogue and  
4 interaction because during 2020 as I indicated  
5 that FINTRAC themselves had suspended any onsite  
6 work and review work.

7 Q Right. So I take it -- or you tell me. Is it  
8 fair to say that BCFSA is largely left to read  
9 between the lines of this data that you receive  
10 and then implement policies and priorities as  
11 you see fit or as BCFSA sees fit?

12 A I'm not sure that I would characterize it that  
13 way, reading between the lines. I mean, I think  
14 the statistical data if we had full information  
15 may be of some use, but as I explained from a  
16 prudential point of view we have the information  
17 that we need that we leverage from OSFI's  
18 guideline B-8 vis-à-vis an AML program and some  
19 of the expectations. We take the deficiencies  
20 or any of the information we receive from  
21 FINTRAC and use that to help us draw as a proxy  
22 almost as to whether or not the institution is  
23 responding in a meaningful way to the  
24 deficiencies identified by FINTRAC that it could  
25 be an indicator of whether or not they have a

1           robust governance and oversight framework that  
2           they're applying it to their institutions. So  
3           the information we have complements what we do  
4           and we leverage it where we can but we rely on  
5           our own mandate, on our own supervisory  
6           framework to direct the work that we do.

7           Q    Wouldn't it be helpful to have more input from  
8                FINTRAC or even the RCMP to develop the work  
9                that you do to develop the prudential policies  
10               on AML that BCFSA is furthering?

11          A    Well, it would -- you know, I mean obviously  
12                more information in many circumstances is of  
13                value, but as a prudential regulator our mandate  
14                with regards to the AML has not been clearly  
15                defined at this point. Going forward once we  
16                have it clearly defined and we know what the  
17                expectations are and the direction we're  
18                heading, then absolutely the more information we  
19                could glean from various sources and work  
20                collaboratively with other sources would make  
21                sense.

22          Q    I note in a response to one of my previous  
23                questions you referenced OSFI B-8 and how that  
24                enables the BCFSA to develop priorities. Or is  
25                that fair or is it just that's the policy

1 document for BCFSA?

2 A No, it's not the -- it's a policy -- it's a  
3 guideline that OSFI outlined, issued in 2008 as  
4 you know for anti-money laundering. In that it  
5 explains a series of expectations and  
6 characteristics of an effective AML program. We  
7 use those and apply them here in  
8 British Columbia. Basically we leverage what  
9 has already been established at a federal level  
10 and apply it where it's applicable here in  
11 British Columbia. We do that with other  
12 documents that OSFI has produced as well. It's  
13 not just the AML.

14 Q And I take it you would agree that since 2008  
15 there have been no significant updates to the  
16 OSFI B-8?

17 A Not that I am aware of. Not that I've seen.

18 Q Doesn't the age of the document cause concern  
19 for the BCFSA and OSFI, if you know?

20 A Not necessarily because the principles therein  
21 apply today as they did in 2008. The mechanics  
22 and the application of them may vary and that  
23 has do be updated, but those fundamental  
24 principles, again these are principles-based.  
25 They are not necessarily explicit rules like you

1                   would find in the United States with some of the  
2                   regulators which are rules-based and constantly  
3                   updating the rules as circumstances change. But  
4                   the principles are a little longer standing and  
5                   are equally applicable today as they were in  
6                   2008.

7                   Q     And I mean I take it you'd agree that the world  
8                   has drastically changed since 2008. An example  
9                   off the top of my mind is that things like  
10                  cryptocurrency wasn't really an issue in 2008,  
11                  the housing market was in a totally different  
12                  state. And so having an updated B-8 would be of  
13                  benefit to both OSFI and the BCFSa, wouldn't you  
14                  agree?

15                 A     Well, I certainly would agree cryptocurrencies  
16                  didn't exist in 2008 and the housing markets has  
17                  changed, but the principles outlined within B-8  
18                  about having senior management oversight and an  
19                  awareness of an AML program is as equally  
20                  applicable today as it was in 2008. Similarly  
21                  the defined role and application of a CAMLO  
22                  applies equally as well today as it did in 2008.

23                         Now, the actual mechanics and information  
24                         and issues that a CAMLO may be dealing with in  
25                         2020 is different, but the principle of having a

1 CAMLO and a job description and an individual  
2 identified is the same.

3 Q I take it your evidence is that the overlying --  
4 the big principles within B-8 remain relevant  
5 but the smaller mechanics need updating. Is  
6 that correct?

7 A Yeah, I mean, I think, you know, any principle  
8 if it's applicable, over time circumstances  
9 change and it has to remain flexible. That's  
10 the beauty of having high level prudential  
11 principles that they have the inherent  
12 flexibility and applicability. Now, of course  
13 if it turns out that the principles no longer  
14 apply, then you have to make an amendment, but  
15 to date from what I understand and from what I  
16 can see in my experience here, fundamentally  
17 those principles apply and we need to -- you  
18 know, we need to be aware that proportionately  
19 and certainly as your example with  
20 cryptocurrency and other things, those elements  
21 are just equally are captured as part of the  
22 overall AML program at any institution.

23 Q To your knowledge has there been any talk of  
24 updating B-8 at OSFI?

25 A I'm not aware. I don't know the answer to that.

1                   There may be, but I ...

2           Q       I appreciate that you might not be in the best  
3                   position to answer that question. Does BCFS  
4                   plan to update the B-8?

5           A       Well, I mean, again as I said in early evidence,  
6                   we are in the process of updating a couple of  
7                   guidelines and once our mandate may be more  
8                   clearly defined and we have a much clearer view  
9                   as to what our roles and responsibilities are  
10                  going to be from the government, that's  
11                  certainly something that could be considered.  
12                  We'd actually probably issue maybe one drawing  
13                  on that and issue one that's more BC specific  
14                  rather than drawing on the higher level federal  
15                  OSFI version.

16          Q       If it's more BC specific, you could respond to  
17                   the specific risks that are inherent to BC and  
18                   may not be as problematic in other provinces.  
19                   That's the idea?

20          A       Yes, that is the idea. And the other thing,  
21                   too, one has to recognize that the credit unions  
22                   are cooperative organizations. They're  
23                   different than a publicly traded bank. The  
24                   mechanics of a credit union is different in many  
25                   ways than a bank, particularly when you look at

1 capital and things like that. So there are some  
2 unique elements that need to be -- or, pardon  
3 me, that could be captured going forward.

4 MR. RAUCH-DAVIS: Thank you, Mr. Elgar. Those are my  
5 questions.

6 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.  
7 Ms. Harlingten.

8 MS. HARLINGTEN: Yes, thank you, Mr. Commissioner.

9 **EXAMINATION BY MS. HARLINGTEN:**

10 Q Mr. Elgar, can you hear me all right?

11 A Yes, I can. Sorry, I had a mouthful of water.

12 Q Not at all. Thank you. So earlier in your  
13 testimony you provided evidence to the  
14 commission about BCFSA's ability to make rules,  
15 but am I correct, Mr. Elgar, that there are  
16 other regulatory guidance or tools that BCFSA  
17 uses in its work?

18 A Yes, we have a series of guidelines that outline  
19 expectations that we have for an institution.  
20 In our assessment work we also have elements  
21 within the *FIA* where there are regulations and  
22 filing return requirements and things like that  
23 that we can refer to. It's not just the  
24 development of a rule, but there's the acts,  
25 various acts and regulations that are in force

1                   that we are aware of, and we ensure that those  
2                   are being adhered to.

3           MS. HARLINGTEN: Madam Registrar, can you please  
4           bring up the document in the will-say documents,  
5           it's the August 11, 2020 letter from Mr. Frank  
6           Chong. It's regarding the regulatory guidance  
7           terminology. Thank you, Madam Registrar.

8           Q    Mr. Elgar, do you recognize this letter? I  
9           recognize you didn't author it, but are you  
10          familiar with it?

11          A    I am familiar with it. Yes.

12          MS. HARLINGTEN: Could you please go to page 2, Madam  
13          Registrar, of this document.

14          Q    Mr. Elgar, I was hoping that you could assist  
15          the Commissioner just by describing the  
16          different types of regulatory guidance that are  
17          articulated in this letter from Mr. Chong.

18          A    Sure, certainly. I mean, the rule, the  
19          definition, it's -- it must be complied. It has  
20          the same legal authority as an act or a  
21          regulation. I believe I mentioned that earlier.  
22          Is it not unilaterally -- or we have not issued  
23          a rule yet, but we are not going to issue a rule  
24          unilaterally. If the circumstances arise, we  
25          will have the requisite consultation with

1 industry and then that has to be -- the rule  
2 before it becomes enforced has to be approved by  
3 the Minister of Finance. Regulatory statements,  
4 it's really -- it's how some of the regulatory  
5 obligations an institution face, how they are to  
6 be exercised, and it primarily relates to  
7 regulatory filings with regards to statistics,  
8 whether it be monthly, quarterly, annually,  
9 semi-annually, annually. And that's the  
10 regulatory filings that we receive. Balance  
11 sheet movements, capital positions, things like  
12 this. And there are certain elements, and I  
13 think there's an example in there, a certain  
14 time frame that you have to reply at the end of  
15 the year for your year-end statements. The  
16 guidelines I've referred to as well, which I  
17 think are very important because the guidelines  
18 communicate what our expectations are for  
19 prudent management and operation of a financial  
20 institution in British Columbia. And the  
21 guidelines themselves we leverage, as we've  
22 indicated already in my testimony, on a number  
23 of elements that exist currently at the federal  
24 level. We are in the process of issuing two  
25 guidelines that are out for consultation

1                   currently, one on outsourcing, which is quite  
2                   important particularly since the pandemic has  
3                   disrupted and dislocated some of the economic  
4                   activities, and information security, which  
5                   again is very important in the last three to  
6                   four, five years with remote working and  
7                   protecting identity and things like that. So I  
8                   think those are really important elements, the  
9                   guidelines. And the last piece is the advisory,  
10                  which is the communications venue that we use to  
11                  share information, communicate information and  
12                  points of interest that we, BCFSA, are  
13                  considering and need to share with industry.  
14                  And it is -- we've issued a number of advisories  
15                  over the last year, a couple of them here in  
16                  evidence, but it is a new methodology that we've  
17                  deployed since becoming FSA with a lot more  
18                  regularity than the prior FICOM.

19                  Q     On this page here, Mr. Elgar, you see under the  
20                  second row, the second bullet on the far right:

21                                 "In the case of non-compliance with a  
22                                 regulatory statement, BCFSA can apply  
23                                 regulatory sanctions."

24                  That's correct?

25                  A     That is correct, yes.



1 organization pay.

2 Q So would it be fair to say, Mr. Elgar, that  
3 there is the form of an incentive to maintain a  
4 normal or good composite credit rating risk  
5 rating?

6 A Risk rating, yes. I mean, certainly it is an  
7 incentive to ensure that the governance and  
8 oversight and risk management is commensurate  
9 with the risk profile based on our assessments  
10 because if risk is elevated and the composite  
11 risk rating deteriorates, there is a penalty in  
12 the CUDIC insurance. If I could draw the  
13 analogy if you have four or five speeding  
14 tickets your insurance rates will go up, or  
15 accident and things like that. There's a  
16 correlation between the risk profile of the  
17 organization and the insurance premiums. Now,  
18 it's only one small part. To be very clear in  
19 the calculation of the premium, the composite  
20 risk rating is only one small -- one part of it.

21 Q Thank you, Mr. Elgar.

22 MS. HARLINGTON: Mr. Commissioner, I don't believe  
23 this has been marked as an exhibit, but if I  
24 could mark this document as the next exhibit,  
25 please.

1 THE COMMISSIONER: Very well. Are we at 424?

2 THE REGISTRAR: Yes, Mr. Commissioner. Exhibit 424.

3 **EXHIBIT 424: BCFSA Letter from Frank Chong re**  
4 **New Regulatory Guidance Terminology dated**  
5 **August 11, 2020**

6 THE COMMISSIONER: Thank you.

7 MS. HARLINGTEN: Those are all my questions for  
8 Mr. Elgar.

9 THE COMMISSIONER: Thank you, Ms. Harlingten.  
10 Anything arising, Mr. Rauch-Davis?

11 MR. RAUCH-DAVIS: No, thank you, Mr. Commissioner.

12 THE COMMISSIONER: Mr. Davis?

13 MR. DAVIS: No, nothing arising, Mr. Commissioner. I  
14 just advise that we may need to take a  
15 ten-minute break to set up the next panel of  
16 witnesses.

17 THE COMMISSIONER: Yes, all right. We'll do that.

18 Thank you, Mr. Elgar. Your evidence has been  
19 very helpful in allowing the commission to  
20 understand the regulation of the provincially  
21 regulated financial institutions in the context  
22 of anti-money laundering regime in  
23 British Columbia and elsewhere. Thank you.  
24 We'll now adjourn.

25 THE WITNESS: Thank you very much.

1 THE COMMISSIONER: We'll now adjourn for ten minutes.

2 THE REGISTRAR: This hearing is stood down for  
3 ten minutes until 12:05 p.m. Thank you.

4 **(WITNESS EXCUSED)**

5 **(PROCEEDINGS ADJOURNED AT 11:55 A.M.)**

6 **(PROCEEDINGS RECONVENED AT 12:05 P.M.)**

7 THE REGISTRAR: Thank you for waiting. The hearing  
8 is resumed. Mr. Commissioner.

9 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
10 Mr. Isaac?

11 MR. ISAAC: Mr. Commissioner, before calling the next  
12 three witnesses, two preliminary matters to  
13 address. The first is regarding the time. I  
14 note that we have one hour that's been requested  
15 by participants. I anticipate my questions will  
16 likely, I'll be able to keep those to under one  
17 and a half hours, but I wanted to canvass the  
18 possibility of sitting perhaps a bit later if  
19 necessary today, perhaps until 2:30 if that's  
20 acceptable to the commission.

21 THE COMMISSIONER: I think that's fine, Mr. Isaac. I  
22 know I have a meeting scheduled for either 2:00  
23 or 2:30, but I notice Mr. Martland was on the  
24 webinar earlier. If he is still is on perhaps I  
25 can ask him to send around an invitation for a

1                   slightly later time. I'll move that meeting.

2           MR. ISAAC: I can advise I have taken the liberty of  
3                   seeking to see whether or not we could push that  
4                   meeting back and I've been advised that there's  
5                   no issues with that. So with apologies for  
6                   taking that liberty, if that is acceptable, Mr.  
7                   Commissioner --

8           THE COMMISSIONER: No, that's fine, Mr. Isaac, that's  
9                   good. Thank you.

10          MR. ISAAC: The second matter is I seek a direction  
11                   that four specific documents not be displayed on  
12                   the livestream today or posted on the  
13                   commission's website if marked as exhibits until  
14                   such time as a pending application relating to  
15                   those records is determined. For the record  
16                   those are documents at tab 21, 22, 26 and 27 of  
17                   the hearing index. For participants that's  
18                   INT1, INT262, INT270 and the Interac overview  
19                   WCO regs 2020. Those are the records at issue.

20          THE COMMISSIONER: All right. Yes, I've seen the  
21                   application and I anticipate getting responses  
22                   to that early next week, so I will make that  
23                   direction in the interim.

24          MR. ISAAC: Thank you. Mr. Commissioner, the next  
25                   three witnesses who will be called together as a

Melanie Paddon (for the commission)  
Kirkland Morris (for the commission)  
Christopher Chandler (for the commission)

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1 panel are Melanie Paddon, Chris Chandler and  
2 Kirkland Morris.

3 Madam Registrar, all three of those  
4 witnesses will be affirming if you please  
5 administer their oaths.

6 THE COMMISSIONER: Thank you.

7 THE REGISTRAR: Witnesses, please unmute yourselves.  
8 Would each of you please state your full name  
9 and spell your first name and last name for the  
10 record. I'll start with Ms. Paddon.

11 THE WITNESS: (MP) It's Melanie Paddon.

12 M-e-l-a-n-i-e. Surname is Paddon, P-a-d-d-o-n.

13 THE REGISTRAR: Thank you. And Mr. Morris.

14 THE WITNESS: (KM) Kirkland Wallace Morris. First  
15 name Kirkland, K-i-r-k-l-a-n-d. Morris is  
16 M-o-r-r-i-s.

17 THE REGISTRAR: Thank you, and Mr. Chandler.

18 THE WITNESS: (CC) Christopher Chandler.

19 C-h-r-i-s-t-o-p-h-e-r C-h-a-n-d-l-e-r.

20 THE REGISTRAR: Thank you.

21 **MELANIE PADDON, a**  
22 **witness called for the**  
23 **commission, affirmed.**  
24 **KIRKLAND MORRIS, a**  
25 **witness called for the**

Melanie Paddon (for the commission)  
Kirkland Morris (for the commission)  
Christopher Chandler (for the commission)  
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1 **commission, affirmed.**  
2 **CHRISTOPHER CHANDLER, a**  
3 **witness called for the**  
4 **commission, affirmed.**

5 THE REGISTRAR: Thank you. Mr. Isaac.

6 **EXAMINATION BY MR. ISAAC:**

7 Q I'll begin by briefly reviewing each of the  
8 panelists' backgrounds with them. Ms. Paddon,  
9 beginning with you -- Madam Registrar, if we  
10 could bring up the document please at tab 3.

11 Ms. Paddon, you provided a copy of your  
12 curriculum vitae to the commission; is that  
13 right?

14 A (MP) Yes, I did.

15 Q And is that a copy of that document that we're  
16 looking at now?

17 A (MP) Yes, it is.

18 MR. ISAAC: If I could ask that be marked as the next  
19 exhibit, I believe exhibit 425.

20 THE COMMISSIONER: Very well, 425.

21 THE REGISTRAR: Exhibit 425.

22 **EXHIBIT 425: Curriculum Vitae of Melanie D.**  
23 **Paddon**

24 MR. ISAAC:

25 Q Ms. Paddon, you are currently an investigator

1 with the Combined Forces Special Enforcement  
2 Team British Columbia and specifically the Joint  
3 Illegal Gambling Investigations Team; is that  
4 right?

5 A (MP) Yes, that is correct.

6 Q And you have 36 years of experience with the  
7 RCMP with 27 years of that focused on money  
8 laundering proceeds of crime and cash bundling;  
9 is that right?

10 A (MP) Yes, that is correct.

11 Q You spent 20 years as part of the RCMP's  
12 Proceeds of Crime from the very first anti-drug  
13 profiteering section in BC when those units were  
14 created in 1992 to when those sections  
15 transformed into IPOC in 2003; is that right?

16 A (MP) Yes, it is.

17 Q And you remained with IPOC until those units'  
18 disbandment in 2012; is that right?

19 A (MP) Yes.

20 Q And after IPOC you became part of RCMP's FSOC  
21 "E" Division where you held positions including  
22 the team leader for group 6, which is the team,  
23 one of the teams responsible for investigating  
24 proceeds of crime money laundering and *PCMLFTA*  
25 offences; is that correct?

Melanie Paddon (for the commission)  
Kirkland Morris (for the commission)  
Christopher Chandler (for the commission)  
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1 A (MP) Yes, that's correct.

2 Q You also served as the primary investigator in  
3 the two-year Project E-Pirate investigation; is  
4 that correct?

5 A (MP) Yes, I did.

6 Q And you have been qualified by the courts as a  
7 money laundering expert?

8 A (MP) Yes, in cash bundling and in proceeds of  
9 crime.

10 Q Thank you. Madam Registrar, we can bring down  
11 that document. If we can bring up the document  
12 at tab 1, please.

13 Mr. Chandler, your turn. Is this a copy of  
14 your CV?

15 A (CC) Yes, it is.

16 MR. ISAAC: If we could have that marked as the next  
17 exhibit, please.

18 THE COMMISSIONER: Very well, 426.

19 THE REGISTRAR: Exhibit 426.

20 **EXHIBIT 426: Curriculum Vitae of Chris Chandler**

21 THE WITNESS: (CC) If it's being posted publicly may I  
22 remove my personal address and phone number and  
23 so on?

24 THE COMMISSIONER: I think we better not post it  
25 publicly until that's been removed, so ...

1 THE WITNESS: (CC) Thank you.

2 MR. ISAAC:

3 Q Mr. Chandler, you are the President and CEO of  
4 Perativ, which through its Access Cash operating  
5 unit is the large ATM operator in Canada; is  
6 that correct?

7 A (CC) Yes.

8 Q And you're presently the President of the ATM  
9 Industry Association, which represents the ATM  
10 industry globally, from 2015 to 2017 and are the  
11 incoming president in 2021; is that correct?

12 A (CC) Correct.

13 Q You represented the white label ATM industry  
14 during the multi-stakeholder review that was  
15 conducted by the Department of Finance in 2008?

16 A (CC) Yes.

17 Q You were involved in the process that led to the  
18 development of Interac's white label ATM AML  
19 operating regulations in March 2009?

20 A (CC) Yes.

21 Q Thank you. And you also represented the white  
22 label ATM industry in connection with the Québec  
23 government's consultation and ultimate  
24 implementation of a provincial money services  
25 business regulatory regime that encompassed

1 white label ATMs; is that right?

2 A (CC) Yes, both at the time they were  
3 implementing it and in the ten years since  
4 trying to get ATMs removed from it.

5 Q I expect I'll be saying the word "white label  
6 ATM" quite frequently, so if I'm going to  
7 abbreviate that to WATM I hope that everyone  
8 will understand what I'm referring to. You  
9 represented the industry as well in connection  
10 with the BC Ministry of Finance's own recent  
11 consultation on the potential regulation of  
12 money services businesses potentially including  
13 WATMs in this province as well; is that right?

14 A (CC) Yes.

15 Q Thank you. Mr. Morris.

16 Madam Registrar, if we would bring down this  
17 document. And bring up the document at tab 2.

18 Mr. Morris, is this a bio that you provided  
19 the commission?

20 A (KM) Yes, it is.

21 MR. ISAAC: If we could have that marked as the next  
22 exhibit, please.

23 THE COMMISSIONER: 427.

24 THE REGISTRAR: Exhibit 427.

25 **EXHIBIT 427: Biography of Kirkland Morris**

1 MR. ISAAC:

2 Q Mr. Morris, you are the Vice President,  
3 Enterprise Initiatives and External Affairs At  
4 Interac Corporation, which is the largest ATM  
5 network in Canada; is that correct?

6 A That's correct.

7 Q And you've worked at Interac for over 20 years?

8 A (KM) That is also correct, yeah.

9 Q And prior to joining Interac you were an  
10 economist with the Department of Finance; is  
11 that correct?

12 A (KM) That's right.

13 Q You, too, were directly involved in the 2008  
14 review that Mr. Chandler referred to and the  
15 implementation, the development and  
16 implementation of Interac's AML rules; is that  
17 correct?

18 A (KM) Yes, that's right.

19 Q Thank you. Madam Registrar we can bring down  
20 that document.

21 I'd like to begin by asking some background  
22 questions about what the white label ATM sector  
23 is, how it's structured, how it operates and  
24 then turn to look at some of the money  
25 laundering risks and typologies that have been

1 associated with the sector, the evidence that  
2 exists for that, and then looking at some of the  
3 current rules in place to mitigate those risks.  
4 So perhaps, Mr. Chandler, starting with you, if  
5 you could just explain what is a white label ATM  
6 and what makes it a white label ATM as opposed  
7 to a bank-owned ATM?

8 A (CC) Thank you. So I've been in the industry  
9 since 2005. It's an industry that started in  
10 1996 or shortly after 1996 when there was a  
11 challenge through the Competition Bureau to the  
12 bank's use of a shared ATM network through  
13 Interac and the competition bureau at that time  
14 opened up that Interac network to non-bank ATMs,  
15 which have since become generally known as white  
16 label ATMs or non-bank ATMs. That market then  
17 grew rapidly. So today my estimation is that  
18 today there's approximately 50,000 ATMs in  
19 Canada. Of those, two-thirds would be white  
20 label roughly and one-third would be bank ATMs.  
21 But importantly the bank ATMs are often grouped  
22 in a bank branch with two or three or four ATMs.  
23 So my estimate would be that there's  
24 approximately 34,000 white label ATM cash access  
25 points for Canadian consumers and probably about

1                   7,000 locations of bank ATMs. So white label  
2                   ATMs make up I think about 80 percent of all the  
3                   convenient cash access points for Canadians  
4                   across the country. Those ATMs are in merchant  
5                   locations, so they would be in bars,  
6                   restaurants, convenience stores, gas stations,  
7                   grocery stores and so on. And for the merchant  
8                   there's a value proposition as well. So first  
9                   and foremost it represents about 80 percent of  
10                  the locations Canadians get cash. Secondly,  
11                  it's essentially a product for the merchant. So  
12                  if you're running a convenience store the ATM  
13                  can serve at least three purposes. Number 1, it  
14                  can draw consumers into your store. People  
15                  looking for cash would choose your convenience  
16                  store over another that did not have an ATM.  
17                  Number 2, it gives cash to your customers in  
18                  their hand while they're in your store. So  
19                  there's a hope that they would spend that money  
20                  or some portion of that money while they're in  
21                  your store.

22                                And number 3, the merchants actually  
23                                generate revenue from the ATM. So they  
24                                typically get a share of the fees that are  
25                                charged to the card holder for the convenient

1 access to their cash. So it's a product that  
2 generates revenue and profits for the small  
3 business owner as well.

4 Q Thank you. And you mentioned about 51,000 or  
5 around that number of white label ATMs in  
6 Canada. Turning to the question of in  
7 British Columbia.

8 Madam Registrar, if we could bring up the  
9 document please at tab 25.

10 And, Mr. Morris, we asked Interac to provide  
11 information about the number of white label ATMs  
12 in its network in British Columbia. Do you  
13 recognize that as the information that was  
14 provided in response to that question?

15 A (KM) Yes.

16 Q We look at in 2020, 4,912 white label ATMs; is  
17 that correct?

18 A (KM) Yes.

19 MR. ISAAC: Thank you. If we could mark that please  
20 as the next exhibit.

21 THE COMMISSIONER: 428.

22 THE REGISTRAR: Exhibit 428.

23 **EXHIBIT 428: Interac - Number of WLATMs in BC**  
24 **since 2010**

25 MR. ISAAC:

1           Q     Now, when we look at how the white label ATM  
2                   business model is structured I expect we'll  
3                   understand a little bit more about how Interac  
4                   fits into the model, but Mr. Morris or  
5                   Mr. Chandler, could you explain to what extent  
6                   does that number represent the totality of all  
7                   white label ATMs operating in the province of  
8                   British Columbia?

9           A     (KM) I'd be happy to start and, Chris, perhaps  
10                   if you want to add something. I think we don't  
11                   know definitively that there aren't ATMs  
12                   operating in the province of BC that aren't  
13                   connected to the Interac network, but I think  
14                   Interac is the leading ATM network in Canada by  
15                   a fairly wide margin, and I think it is a fairly  
16                   safe assumption that all or most all white label  
17                   machines operating in the province would be  
18                   connected to Interac. And it's quite likely  
19                   that some number of those or many or all of  
20                   those may also be connected to one or more other  
21                   networks operated by international schemes and  
22                   so forth, but it is probably a reasonably safe  
23                   assumption to assume that that is very close to  
24                   the totality of the white label ATM count in the  
25                   province.

1           Q     Thank you. Mr. Chandler, do you have something  
2                    you're able to add to that?

3           A     (CC) Yeah, just by context, of our 10,000 ATMs  
4                    more than 98 percent of the withdrawals occur on  
5                    the Interac network, so by extrapolation, if I  
6                    had an ATM and it was connected to  
7                    Mastercard/Cirrus, Visa and not the Interac  
8                    network, at most I could be doing 1 to 2 percent  
9                    of the volume. So it would make it a very  
10                  unattractive ATM from a consumer use and  
11                  withdrawal standpoint. So I'm personally after  
12                  15 years not aware of any ATMs. Doesn't mean  
13                  there aren't any, but I'm not aware of any and I  
14                  find it hard to imagine that there are any that  
15                  are not connected to the Interac network in  
16                  Canada.

17          Q     Thank you. And turning to the question of how  
18                    the white label ATM model is structured and how  
19                    it operates, if we could bring this document  
20                    down, please, and bring up the document at  
21                    tab 18.

22                    Now, Ms. Paddon, I expect we will be  
23                    addressing some of the contents of this report  
24                    with you shortly as we look at money laundering  
25                    risks, but at this point I'll ask simply whether

Melanie Paddon (for the commission)  
Kirkland Morris (for the commission)  
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1                   or not you recognize this document, and can you  
2                   just briefly identify what it is, please.

3           A       (MP) Yes, so I do recognize the document. It  
4                   was a report that was put out by the RCMP back  
5                   in 2008 in relation to the white label ATMs and  
6                   the risk of money laundering across the country  
7                   that is associated to the white label ATM industry.

8           MR. ISAAC: Thank you. If we could mark this please  
9                   as the next exhibit.

10          THE COMMISSIONER: 429.

11          THE REGISTRAR: Exhibit 429.

12                   **EXHIBIT 429: RCMP Criminal Intelligence -**  
13                   **Project Scot, November 10, 2008**

14          MR. ISAAC:

15          Q       Madam Registrar, if we could go to page 21,  
16                   please, in the electronic page numbers. And  
17                   perfect. And just make sure we can capture that  
18                   entire figure 4 and everyone can see that.

19                   I'm hoping to use this diagram as a bit of  
20                   an aid to explain how the sector operates and,  
21                   Mr. Chandler, perhaps you can be the guide here  
22                   as we go through it, but I invite any other  
23                   panelists to weigh in if there's any  
24                   clarification.

25                   So starting we'll see this is figure 4, it's

1 described as the transaction process. And  
2 starting down at the bottom right of this  
3 diagram there is an area, a box circumscribed  
4 with a dashed line called "Inter-member  
5 Network," and you'll see Interac is at the very  
6 centre of that. Could you explain,  
7 Mr. Chandler, what is the that Inter-Member  
8 Network, please, and what role does it play in  
9 the operation and structure of the sector?

10 A (CC) Sure. My understanding -- I mean, Kirkland  
11 may be better on that, but my understanding is  
12 this is the switch or the interconnectivity  
13 between the members of Interac where they are  
14 directly connected to each other. So this data  
15 is transferring between the banks directly with  
16 Interac's intermediation in the middle. So in  
17 the industry we would call these members of  
18 Interac to be direct connect members. That's  
19 the -- my understanding is the highest standard  
20 of membership. And essentially, you know, more  
21 simplistically what it means is if you put a  
22 Bank of Montreal card into the Royal Bank ATM  
23 you can take money out because it will  
24 communicate through the Interac inter-member  
25 node directly to Bank of Montreal, who will

1 authorize the Royal Bank machine to give you  
2 money.

3 Q Thank you. Mr. Morris, did Mr. Chandler get  
4 that right, or do you have anything to add about  
5 that?

6 A (KM) Yeah, I think that's a pretty accurate  
7 description. Inter-Member Network is indeed a  
8 reference to Interac's multiparticipant  
9 communications network that facilitates the  
10 connection in the case of ATMs of ATM operator  
11 on one side to financial institution on the  
12 other. That same network is also used to  
13 process debit card transactions that originated  
14 as point of sale for merchant purchases.

15 And so, Mr. Chandler is right, there are a  
16 series of members who have direct connections  
17 into that network. They number in the teens.  
18 I'm not certain of the exact number off the cuff  
19 but include most all of the Canada's major  
20 financial institutions and a number of  
21 non-financial institution processors. They  
22 facilitate access on behalf of both themselves  
23 and in some cases provide access to that network  
24 for other participants who act downstream and  
25 use those direct connectors as a gateway into

1 the Inter-Member Network environment.

2 Q And you refer to direct connectors. I take  
3 those are all -- are those all deposit-taking  
4 financial institutions that would be subject to  
5 the *PCMLTFA*?

6 A (KM) They are. And so the Inter-Member Network  
7 direct connection is very much a technology  
8 concept as opposed to a business concept. It is  
9 in a direct interface into the communications  
10 network that allows for the transmission of  
11 messages between what we call the acquiring side  
12 of the transaction where, you know, the ATM is  
13 or the POS point of sale terminal at a merchant  
14 location and the issuing side of the transaction  
15 back to the bank or other financial institution  
16 who maintains the cardholder account from which  
17 funds are seeking to be withdrawn or from which  
18 payment is seeking to be made. And so it's very  
19 much a technology -- very much a technology  
20 network, and so those direct connectors are all  
21 for the most part fairly large processors, but  
22 all subscribe to a common set of Interac  
23 operating and security and technology and  
24 related specifications requirements, protocols  
25 for the purpose of maintaining safety, security,

1 efficiency and sound operation of that network  
2 technology infrastructure.

3 Q And is it correct that in order from a white  
4 label ATM, any ATM to operate, to carry out  
5 transactions, it needs to be able to have access  
6 to that Inter-Member Network?

7 A (KM) That's correct.

8 Q So I'd like to begin working our way out from  
9 that chain. And I think the connection that's  
10 illustrated in this figure occurs at the bottom  
11 between an entity -- here it's described as  
12 Calypso; this is just an example, obviously --  
13 but as an indirect connector or acquirer. What  
14 is an indirect connector or acquirer and what is  
15 its role in the operation and the structure of  
16 the model?

17 A (KM) So we generally refer to an indirect  
18 connector as a party that accesses the  
19 technology infrastructure of the Inter-Member  
20 Network through a gateway service provider. So  
21 in this case it looks as though the diagram is  
22 depicting Calypso connecting through Scotiabank  
23 as the gateway service provider. We call that  
24 role from Scotiabank the role of a connection  
25 service provider and that's formally defined in

1 our rules as a role that members may play.

2 The acquirer role is sort of distinct in  
3 some way from the form of connection whether  
4 direct or indirect. The acquirer role refers to  
5 the party that has a direct relationship with  
6 Interac as a service participant, in this case  
7 as an ATM service participant in our Interac  
8 cash withdrawal service, who maintains  
9 responsibility as the party that is connecting  
10 in this case a white label ATM to that network.  
11 And so that party has, if you will, business  
12 accountability for satisfying Interac's rules  
13 and regulations, business requirements and so  
14 forth in relation to the ATM service and to its  
15 ATM installation.

16 Q And on that point, Mr. Morris, it's the -- it's  
17 this acquirer that Interac would have a direct  
18 contractual relationship with; is that correct?

19 A (KM) That is correct, yeah.

20 Q And when we get to look at the regulations, the  
21 AML operating regulations that interact has in  
22 place, those are regulations that apply to the  
23 acquirer in order to essentially apply scrutiny  
24 to up the chain, if that's correct -- is that  
25 correct?

1           A       (KM) That's correct. Yeah, that's correct.

2           Q       So if we move up from that level beyond the  
3                    acquirer, the next sort of level here in the  
4                    hierarchy is what's referred to in this diagram  
5                    as the independent sales organization or the  
6                    ISO, a third party processor. And I've seen  
7                    those referred to as well as an acquirer  
8                    business partner. What is the role of the ISO  
9                    in this model?

10          A       (CC) So maybe I'll speak to that because that's  
11                    what my company is. So we -- our job is to  
12                    essentially make sure that the ATMs are  
13                    accessible to Canadians, so finding the merchant  
14                    locations, installing the ATMs at the merchant  
15                    location and then servicing them, make sure  
16                    they're running properly, that the cash is  
17                    supplied, all the recordkeeping back through the  
18                    switch is maintained, that all of the  
19                    appropriate documentation is obtained if in fact  
20                    someone other than us is the cash owner. We  
21                    have documentation, know your client  
22                    documentation, source of funds documentation, in  
23                    many cases criminal checks and so on. That  
24                    information is all gathered. It's all supplied  
25                    into the Interac member that we process through

1                   and it's audited annually. So that's really the  
2                   role of the ISO.

3           Q       Madam Registrar, if we could zoom out slightly  
4                   in order to capture the paragraph of text that's  
5                   immediately above this diagram. Zoom out a  
6                   little bit just so we can see the  
7                   paragraph that's above here. So just looking  
8                   there there's a reference here in this  
9                   paragraph, it says:

10                                "In the process defined above, several  
11                               intermediaries could be added to the  
12                               process. For example, a sub-ISO could be  
13                               part of the process."

14                   And it goes on to describe this and the balance  
15                   of the report indicates that this is a source of  
16                   perceived risk. Mr. Chandler or Mr. Morris, if  
17                   you have a perspective on this as well, are  
18                   there any restrictions on how complex the webs  
19                   or hierarchies beyond the ISO in terms of  
20                   sub-ISOs or sub-sub-ISOs between -- that could  
21                   be interposed between the ISO and the ultimate  
22                   owner of the white label ATM? And if you could  
23                   give a sense of that would be helpful.

24           A       (CC) So a sub-ISO would be -- we also gauge this  
25                   based on who has the contract with the merchant

1 location. So an example of a sub-ISO would be  
2 another -- a company different than mine that  
3 contracts with the merchant for the ATM and --  
4 but in other respects they're processing through  
5 my company as an ISO. So they would be -- they  
6 would not have a contract directly with a switch  
7 processor or Interac member. They would be  
8 processing essentially through my company, thus  
9 making them a sub-ISO, but in each case the cash  
10 owner, which is the focus of this commission,  
11 the cash owner is subject to there can only be  
12 one cash owner and that cash owner is subject to  
13 all of the KYC source of funds declarations,  
14 criminal checks and so on. So no sub-ISO can  
15 provide an ATM or get an ATM hooked up through  
16 me or through other -- ultimately it gets back  
17 into the -- into a processor where all of this  
18 documentation must be provided and it has to  
19 jive with the bank account that that ATM will  
20 deposit into. So if the bank account is for ABC  
21 Convenience, then the cash owner has to be tied  
22 to that bank account. And the documentation is  
23 all gathered and posted accordingly.

24 Q Okay. We'll -- no doubt as you telegraphed,  
25 Mr. Chandler, the focus is often on the question

1 of the cash owner, and we'll get into that in a  
2 moment. I'd like to ask just for a moment about  
3 the ATM machine itself. Can any individual or  
4 entity own a white label ATM machine in Canada?

5 A (CC) To my knowledge they can, yes.

6 Q And that could be an individual business owner  
7 or a larger company or an ISO, for example?

8 A (CC) Yeah, it can be anyone. The way that I  
9 often explain the industry to folks that aren't  
10 familiar with it is that they can relate to it  
11 easier when they think of their home television,  
12 and on your home television you typically have a  
13 Bell 5 box or a Rogers box or a Videotron or  
14 Telus or something like that. When that box  
15 arrives at your house it doesn't do anything;  
16 right? It's just a piece of hardware that a  
17 telecom company sent you. That's an ATM; okay?  
18 So it's just a box. And when you connect the  
19 cable or now the wifi into that box it lights up  
20 200 channels on your television. So when you  
21 connect the cable from my company which is tied  
22 in through my Interac network processor, the ATM  
23 becomes part of the financial system. So  
24 there's a distinction between buying an ATM,  
25 which anyone can do and hold this piece of

1 hardware which does nothing, and connecting that  
2 ATM to the financial network when you have now  
3 had to comply with the know your client rules to  
4 do so.

5 Q Thank you. And we'll turn to the that question  
6 of the cash owner in a moment. But just so we  
7 understand how things currently exist in terms  
8 of the regulation of the entities that are shown  
9 and that we've reviewed here, is it accurate  
10 that aside from the financial institutions that  
11 are specifically within that Inter-Member  
12 Network, the other entities here are not subject  
13 to the *PCMLTFA*, the *Bank Act* or other federal  
14 regulation and outside of Québec are not subject  
15 to specific provincial regulation? Is that  
16 accurate?

17 A (CC) I believe that's accurate. With respect to  
18 each ATM the only two levels, the two levels of  
19 regulation I'm aware of is number 1, each ATM  
20 must settle to a single Canadian bank account.  
21 So that bank account's subject to all the rules  
22 that a bank account is subject to. And  
23 number 2, the cash owner is subject to all of  
24 the rules through Interac.

25 Q And those are the Interac operating rules that

1 we'll discuss, right, those are not legislation  
2 or regulation; is that correct?

3 A (CC) They are the Interac white label money  
4 laundering -- anti-money laundering regulations  
5 that were formed in cooperation with the  
6 Department of Finance in 2008.

7 Q So the question of the source of cash, and  
8 that's as we described is the focus of many of  
9 the perceived money laundering concerns.  
10 Whether Mr. Chandler you agree with those risks  
11 or not, can you describe, please, the potential  
12 sources of cash that can be loaded into a white  
13 label ATM in Canada. What are the different  
14 ways in which that can occur?

15 A (CC) You mean what are the difference sources or  
16 how is the cash loaded?

17 Q Yes, you know, I understand that there can be  
18 service providers that may provide, may load the  
19 cash, but what are the different ways or  
20 sources, who is permitted to actually load money  
21 into a white label ATM?

22 A (CC) So there's generically three different --  
23 three generic buckets of folks that would load.  
24 So one would be the ISO. So we would load cash  
25 into thousands of our ATMs and we do that

1                   directly. Second is the merchant themselves.  
2                   So think of merchants like a Walmart, for  
3                   example, that put all of their own cash into  
4                   their ATMs. And for the merchant an ATM is no  
5                   different than a cash register. If you think  
6                   about a merchant establishment, every morning  
7                   they're putting cash into their cash register,  
8                   and they can put cash into their ATM. It's  
9                   functionally no different. I know there's been  
10                  a perception created in society that it's  
11                  somehow different, but it's truly no different  
12                  than filling cash into a cash register.

13                   The third type that is much less frequent  
14                   but it has become a business for some people is  
15                   supplying that cash. So there are cash-loading  
16                   services. I know of people who have mortgaged  
17                   their house and taken their \$200,000 and they  
18                   load some ATMs and they find that to be a  
19                   profitable small business. That is not terribly  
20                   frequent, but it is in the marketplace.

21                  Q   And I expect we'll look at potential -- the need  
22                   for and the potential for additional rules, but,  
23                   Mr. Chandler, perhaps you could comment on given  
24                   that many of the money laundering-related  
25                   concerns that I expect we will hear about focus

1                   on that question of merchant loading, has there  
2                   been any consideration that you're aware of  
3                   simply prohibiting that form of loading ATMs,  
4                   that the ability of whether that's a small  
5                   business owner, someone who owns a bar or a  
6                   convenience store of loading the ATM with their  
7                   own cash and what would the impact from your  
8                   perspective of such a measure be if it were  
9                   implemented?

10           A       (CC) Well, first off, I'm not -- to me there's  
11                   four methods that a merchant would get cash into  
12                   a bank. So the first is they would simply go to  
13                   the bank and deposit it at the bank teller. The  
14                   second is they would go and deposit it through  
15                   the bank ATM that accepts deposits. The third  
16                   is they may go use a bank night depository. And  
17                   what you're referring to is a fourth way that  
18                   money can get from the merchant to the bank  
19                   which is through a white label ATM. So there's  
20                   four methods that they can move cash into the  
21                   bank, and this notion that somehow we should ban  
22                   that merchant from using the ATM but it's okay  
23                   for the night depository, the bank ATM and the  
24                   teller, it kind of escapes me. I don't even  
25                   know why that's a topic other than lack of

1                   understanding of how the system works. So I'm  
2                   happy to share some more information on that  
3                   today. But for me I don't understand at all why  
4                   the ATM would be singled out in a merchant  
5                   environment when that ATM has a higher standard  
6                   of documentation related to it than the other  
7                   three which are simply the documentation  
8                   retained by the bank.

9                   Q     What would -- and I appreciate you question the  
10                   premise of the need to implement such a measure,  
11                   but perhaps you could help the commission  
12                   understand what the impact would be in terms of  
13                   how people currently operate with it, what would  
14                   be the real impact in terms of how, perhaps why  
15                   is it that --

16                   A     (CC) Yeah. So what would happen if that type of  
17                   regulation was put in place. I think you would  
18                   see the cash access points for Canadians  
19                   diminish dramatically. I would estimate as many  
20                   as half of all the white label ATMs would leave  
21                   the marketplace for two reasons. Number one,  
22                   the cost of having me and an armoured car load  
23                   the ATM is orders of magnitude higher than  
24                   having the merchant load the ATM as they do  
25                   their cash register. So it would render many of

1                   those ATMs unprofitable and they would be  
2                   removed from service. Number 2, you would have  
3                   even if there was still some profit with that  
4                   ATM, the merchants share of that profit would go  
5                   down dramatically. So they would -- a merchant  
6                   that may be generating 100, 200, \$300 a month  
7                   for his store or restaurant or bar, you know,  
8                   may suddenly be making 20 or \$30 a month and no  
9                   longer feel that that's an appropriate use of  
10                  the space and he can generate more money  
11                  selling, you know, potato chips or whatever.

12                                So I think the impact would be really felt  
13                   mostly by the Canadian consumer who would  
14                   suddenly find themselves in a market that my  
15                   estimate is it's 80 percent of the access  
16                   points, if half of them were removed because of  
17                   a regulation like that you'd have 40 percent  
18                   less places for people to get their cash.

19            Q           I'd like to turn now to the money laundering  
20                   risks that have been associated with the white  
21                   label ATM industry. Ms. Paddon, if I could ask  
22                   you to begin on this topic and then I'll invite  
23                   the perspectives of the other panelists and  
24                   we'll work through that.

25                                I would like to begin perhaps we could go

1 back to the second or third page, please, of  
2 this report that we're looking at now.

3 Ms. Paddon, have you had an opportunity to  
4 review this document?

5 A (MP) Yes, I have. I just want to let you know  
6 if it's appropriate I'd like to refer to the  
7 paper document because I've lost the electronic  
8 document on my screen for some reason. So if  
9 you could refer to certain pages and I can go to  
10 it through the paper portion rather than  
11 guessing.

12 Q I have no issues with that, Ms. Paddon. If we  
13 can just make sure we're looking at the same  
14 page on both ends that would be helpful.

15 A Okay.

16 Q And I think you described this as an RCMP  
17 intelligence assessment of the white label ATM  
18 industry and it's dated November 2008; is that  
19 correct?

20 A (MP) Yes, that's correct.

21 Q And this would be just prior to the adoption of  
22 Interac's AML regulations that I expect we will  
23 be hearing about. Have you seen or are you  
24 aware of any more recent intelligence reports of  
25 this nature that have examined the white label

1 ATM sector?

2 A (MP) There are some out there, I believe. I may  
3 have reviewed them through some of the documents  
4 that you provided me; however, in reference to  
5 this document, this is the most recent one I'm  
6 aware of that's been produced by the RCMP.

7 Q Okay. And appreciating you did not author this  
8 report, would you -- and you can direct us to  
9 certain pages or portions if you would like to.  
10 I know that there's a portion that includes key  
11 findings that we'll look at. But if you could  
12 describe what some of the principle money  
13 laundering risks identified with respect to  
14 white label ATMs and what your understanding of  
15 those are, please?

16 A (MP) Yes, okay. I can. So in the police world  
17 part of the problem or part of the issues that  
18 we often have in relation to the criminals and  
19 the criminal organizations that we identify are  
20 in the first portion or placement stage of the  
21 money laundering process. That is the stage  
22 where the criminal is trying to get his money  
23 into the system without being detected. There  
24 are a number of money laundering processes which  
25 you can push your money through the system,

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1                   whether you're dealing with bulk cash, nominee  
2                   ownership, some of these kind of things, but  
3                   generally from the money laundering end of the  
4                   situation it's difficult for the criminal to get  
5                   their cash into the system in the first place.  
6                   So white label ATMs provide them the opportunity  
7                   to place the money in the system with some  
8                   element of anonymity. They are able to  
9                   intermingle their funds by taking the funds from  
10                  a legitimate source and then taking, for  
11                  example, drug proceeds and putting the drug  
12                  proceeds into the white label ATM. Other risks  
13                  are things like because they are not attending a  
14                  bank and going to a bank, they are not -- they  
15                  don't have a relationship with that particular  
16                  bank face to face by making their deposit like a  
17                  normal deposit would be made. There's kind of  
18                  no KYCs there. They're able to just push their  
19                  money into the system in the placement stage and  
20                  in that whole process it's laundered and comes  
21                  out the end back to their bank account but it's  
22                  now clean money.

23                                So that detection tool has given them  
24                                distance from the proceeds being identified as  
25                                drug money. It's intermingled, so it makes it

1                   difficult for the police to investigate because  
2                   these money laundering investigations are very  
3                   complex. They take a lot of resources, they  
4                   take a lot of time, and they are lengthy and  
5                   complicated, to say the least. Because there is  
6                   no government oversight in what is going on when  
7                   that person, for example the criminal or  
8                   criminal organizations places their funds into  
9                   the system, that also gives them the opportunity  
10                  to continue with their criminal activity because  
11                  they're not reporting directly to FINTRAC and  
12                  there's no oversight. There's minimal  
13                  oversight.

14                         So there's somewhat a lack of accountability  
15                         by the owner because they -- although they are  
16                         at the end being looked at through Interac,  
17                         obviously, because in order for them to connect  
18                         to the Interac network they would have to  
19                         produce a number of documents and they would  
20                         have to explain what their source of funds were.  
21                         If you're a criminal and you're an owner of a  
22                         white label ATM, it's your responsibility to  
23                         fill out that source of funds declaration. So  
24                         the system is based on the honest person. It's  
25                         not based on the criminal who's going to find an

1                   angle to get his money into the system in that  
2                   placement stage. So he may lie in his source of  
3                   funds declaration and of course he is not going  
4                   to reveal that he is intermingling funds with  
5                   his bar or his strip club or wherever the white  
6                   label ATM is sitting.

7                   There's a lack of information sharing  
8                   because it is not regulated, so in order for us  
9                   as the police to investigate situations like  
10                  this we rely a lot on our partners to come  
11                  forward, whether it's FINTRAC or whether it's  
12                  the banks, and make some of those phone calls.  
13                  And some of those white label ATM owners, as I  
14                  mentioned, are somewhat anonymous in that unless  
15                  something has triggered their behaviour, and  
16                  they're smart at it because they will keep their  
17                  float at below, say, \$5,000 so that there's no  
18                  red flags, it sometimes is difficult to actually  
19                  identify them until such a time as they have got  
20                  to the point where the police are actually  
21                  looking at them.

22                  On top of that, you've got other crimes that  
23                  are also something to take into consideration  
24                  such as counterfeit bills can go into these  
25                  machines. Skimming operations occur out of some

1 of these white label ATM where they can actually  
2 skim the information from the credit card or for  
3 the person's bank account information, that kind  
4 of stuff. So that's a problem. And of course  
5 there's the obvious tax evasion because there  
6 are no doubt evading their taxes with the money  
7 that they're making, and there's fraud as well.  
8 So these are some of the risks that one has to  
9 consider when operating a white label ATM for  
10 the general public to be aware of, and in  
11 particular case if you're a criminal, there are  
12 ways that you can get around it. One other  
13 thing I might mention also is that once the  
14 funds have come to your account in the circle of  
15 the money laundering circle, you can now take  
16 that money and you can transfer it overseas, you  
17 can transfer it to offshore, you can transfer it  
18 to nominees; these are also some of the issues  
19 that need to be considered as well.

20 Q Thank you. And I will invite the opportunity  
21 for the other panelists obviously to engage with  
22 the issues that have been identified. I would  
23 like to turn to a page 6 please of the report  
24 and this is where there's a couple of  
25 pages where the key findings are summarized.

1 I'd like to review a few of those. If we look  
2 at -- they begin here. We've covered --  
3 Ms. Paddon, you have covered a number of these,  
4 including if we look down on this page it  
5 says -- and I think this is the fifth bullet  
6 point that we're looking at, it says:

7 "White label ATMs are an ideal method to  
8 launder significant amounts of money. The  
9 estimated of money that can potentially be  
10 laundered through those machines is close  
11 to \$315 million and could easily reach  
12 \$1 billion annually.

13 The use of white label ATM skips the  
14 placement stage altogether as the money is  
15 loaded into the machine, gets  
16 electronically deposited into the bank  
17 account attached to the ATM. It also has  
18 the added advantage of the lack of  
19 physical contact with the employees of the  
20 financial sector that could detect  
21 suspected activities."

22 And it goes on to say that:

23 "Intelligence and investigations have  
24 demonstrated for several years that white  
25 label ATMs have been and still are used

1                                   for money laundering purposes."

2                                   Now, this report was in 2008. I appreciate  
3                                   there's -- we will -- there's a lot of things to  
4                                   unpack there. Perhaps Ms. Paddon, though, you  
5                                   can explain, and you touched on this, in terms  
6                                   of what it refers to here is skipping the  
7                                   placement stage and what the significance of  
8                                   that is. And perhaps that's something you may  
9                                   have already touched on, but if you can just  
10                                   elaborate on that slightly further.

11                   A       (MP) Okay. So in the placement stage of money  
12                                   laundering that is usually the first -- it's the  
13                                   first stage of money laundering, and it's the  
14                                   first thing that the criminal has to do is to  
15                                   get his money in that system. It's difficult to  
16                                   do because if they are going to get caught  
17                                   generally, the criminal gets caught in the  
18                                   placement stage, because with a regular  
19                                   situation where a person goes to the bank, the  
20                                   first thing they are going to be asked is what  
21                                   are your source of funds, if it's anything over  
22                                   \$10,000. Or the bank will ask, you know, you  
23                                   have to have a bank account with them, and they  
24                                   would ask you what is your source of funds  
25                                   there? Where did you get that money from? So



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1 approximately 5 percent of white label  
2 ATMs in Canada. If other information is  
3 substantiated, the number of white label  
4 ATMs used or controlled by organized crime  
5 to launder proceeds of crime can reach  
6 close to 20 percent of all white label  
7 ATMs currently in operation in Canada."

8 And then the next bullet point goes on to  
9 describe Hells Angels as well as other drug  
10 trafficking organizations laundering money  
11 through white label ATMs, including in  
12 British Columbia. Ms. Paddon, you served on  
13 BC's anti-drug unit since their inception in  
14 1992 and have been involved in money laundering  
15 investigations really since that time. From  
16 that vantage point, what if anything did you see  
17 or were aware of beyond what we're looking at in  
18 this report relating to either the control by  
19 organized crime of white label ATMs in BC or  
20 Canada and/or the actual use of those white  
21 label ATMs to launder. What can you tell the  
22 Commissioner about that please.

23 A (MP) So back in 2008 or when white label ATMs  
24 were somewhat a new thing, primarily the  
25 majority of investigations or a great deal of

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1 investigations that were conducted by the police  
2 at that time were based around drug  
3 trafficking -- drug importations, drug  
4 trafficking, that kind of thing. So what I've  
5 seen in the past and what has been noted in my  
6 mind is that the white label ATM industry has  
7 grown and that the criminal element and criminal  
8 organizations have seen the benefit of having  
9 and owning their own white label ATMs to launder  
10 their money. The other thing I'm also noticed  
11 is that the crimes have grown in size, magnitude  
12 and the networks are stronger and bigger, more  
13 connected and they're more global now than they  
14 used to be. So back then in 2008 basically you  
15 would have your outlaw motorcycle gang or your  
16 organized crime group that kept within  
17 themselves and they had a number white label  
18 ATMs that they would run through their  
19 businesses, but it was fairly central. It was  
20 not as not as -- it didn't span out as much and  
21 it certainly didn't seem to have much of a  
22 global feel to it. It was more a local feel.  
23 So the crimes have changed a great deal over  
24 the years, too, where these organized crime  
25 groups are using these white label ATMs to

1                   launder money from, like, human trafficking,  
2                   extortion, illegal gaming. Any indictable  
3                   offence that they are involved in they will use  
4                   these white label ATMs because they have more  
5                   control over where they're moving their money  
6                   to, whether it's locally or it's offshore or to  
7                   other jurisdictions and countries.

8                   Q    Ms. Paddon, the estimate here both in terms of  
9                   what's described as the organized crime control  
10                  of white label ATMs of a minimum of 5 percent as  
11                  well as the amount that's described as estimated  
12                  as being laundered are quite significant. Are  
13                  you aware of any intelligence investigations or  
14                  cases that would support the estimate described  
15                  here of the laundering occurring in the  
16                  300 million to \$1 billion range or any  
17                  investigations or prosecutions that suggest that  
18                  that's actually occurring?

19                 A    (MP) I have an investigation that we currently  
20                  worked on or recently worked on that was of  
21                  interest. I can't give you details specifically  
22                  on the investigation but -- and I certainly  
23                  can't tell you to what realm exactly of money  
24                  was actually being pushed through these white  
25                  label ATMs, but I can explain the investigation

1 if that's of any assistance.

2 Q Yes, to the limit of appreciating there may be  
3 details you're unable to describe in open  
4 hearing, but yes, if you could describe what  
5 that is, as well as the relevant details for the  
6 Commissioner that would be helpful.

7 A (MP) Yes, okay. So we recently looked at an  
8 investigation that involved the owner of a ATM  
9 business. He lived in the Lower Mainland or he  
10 resides in the Lower Mainland and he had  
11 connections to organized crime in the Lower  
12 Mainland. His business was expansive. He had  
13 approximately 200 white label ATMs across the  
14 Lower Mainland, 80 of which were in the casinos.  
15 So he has been on the radar of the police for  
16 some time and so his licensing and registration  
17 renewal was coming up through GPEB. In order  
18 for him to continue operating his white label  
19 ATMs out of the casinos they need to do a review  
20 and they need to look at his background, what  
21 this particular person's about, and you know,  
22 how his white label ATMs are being used. Part  
23 of that process is that they must be able to  
24 clarify or verify that he is not involved in  
25 criminal activity, you know, he does not have a

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1 criminal record and that he's conducting  
2 business legally. So during their inquiries,  
3 they worked with us, the police, the CFSEU, we  
4 worked together to look into this particular  
5 person and during the investigation we learned  
6 that there are a number of police investigations  
7 that had occurred on this particular person.  
8 Not necessarily he had been charged but that he  
9 was involved in criminal activity that was  
10 associated to organized crime and large scale  
11 organized crime and that he was using his white  
12 label ATMs to launder the funds. This is what  
13 we believed at the time. So we were looking at  
14 him quite closely. During the investigation  
15 there were two incidents or two issues that came  
16 up that were very obvious. One was a project  
17 out of another province whereupon the particular  
18 individual had been -- I'll call him subject 1.  
19 So subject 1 had been approached by subject 2  
20 and asked if subject 1 would be in agreement to  
21 allow subject 2 to use his cash machines in this  
22 other province. Subject 2 was a well-known drug  
23 trafficker. The project was expansive and he  
24 and his partner were actually charged and  
25 convicted of proceeds of crime, money

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1                   laundrying, conspiracy for proceeds of crime  
2                   money laundrying as well as drug trafficking.  
3                   He was a high-level drug importer. So during  
4                   the intercepts that were being listened on this  
5                   particular investigation, subject 1 was heard to  
6                   be counselling and telling subject 2 on the best  
7                   ways to launder money through these white label  
8                   ATMs. Subject 2 was not familiar with how to  
9                   run an operation -- sorry, to run a white label  
10                  ATMs. He didn't know how it all worked, how he  
11                  could put his drug money into the white label  
12                  ATMs, this sort of thing. So subject 1 was  
13                  counselling him and telling him things like when  
14                  you put the bills in make sure that you've got  
15                  the elastic bands taken off of them, make sure  
16                  they're not folded so it doesn't cause problems  
17                  or detect any suspicious, you know, activity in  
18                  that particular white label ATM, that kind of  
19                  thing. So clearly subject 1 was fully aware  
20                  that the money was dirty money and may have been  
21                  intermingled with clean money, but if it were  
22                  clean money and bank ready it would come as  
23                  strapped money in the 100 note blocks or bricks  
24                  and then placed into the machine which is  
25                  legitimate money that comes out of a bank. So

1                   that was one issue that came up. Or one  
2                   investigation that came up.

3                   The second one came up in relation to this  
4                   particular individual where he was tied in with  
5                   a local that was involved in organized crime.  
6                   This particular local had connections down in  
7                   the US and he had associates, again in organized  
8                   crime, that were tied into -- had in close  
9                   proximity to a country that distributes drugs,  
10                  is well known for distributing drugs.

11                  And so subject 1 and let's say subject 3  
12                  would go down to the US and they would fly to  
13                  this third country. When the police looked at  
14                  their bank records down in the US they  
15                  discovered that a lot of the money was being  
16                  funneled through a student loan fund which  
17                  appeared to be a money laundering process of  
18                  getting the money in and out of the US to this  
19                  source country.

20                  So as a result of these red flags and the  
21                  investigation that both the police did as well  
22                  as GPEB's interview with this individual, he was  
23                  first placed on sanctions and fined heavily.  
24                  However, clearly he never explained to GPEB when  
25                  they were interviewing him that he had been

1                   involved in criminal crime -- sorry, had been  
2                   involved in criminality and that these  
3                   investigations he had never revealed to GPEB.  
4                   You know, he maintained that he was not involved  
5                   in criminal activity when in actual fact he was.  
6                   So they removed all 80 of the -- they revoked  
7                   his licence and they removed all 80 of the ATMs  
8                   out of the casinos.

9                   Q     Thank you.  And, Madam Registrar, if we could  
10                   bring up the documents at tab 19.  I would like  
11                   to briefly look at this.  I think this may have  
12                   been one of the other documents you referred to,  
13                   Ms. Paddon.  Have you seen this document before?

14                   A     (MP) Sorry, I don't have -- I'd had a problem  
15                   with technology, so I can't see any  
16                   documents.  You'll have to explain what the name  
17                   of it is so I can review it.

18                   Q     I'm looking at a document with a title "White  
19                   Label ATMs Sector in Canada."

20                   A     Excuse me for a moment.  I'll have to see if I  
21                   can ... yes, I've got it right here.

22                   Q     And I appreciate -- so have you seen this  
23                   document before?

24                   A     (MP) Yes, I have.  I reviewed it.

25                   Q     I appreciate there's no document date on the

1 document itself, although the listing of the  
2 document as it was provided to us indicates it's  
3 from the Department of Finance dated March 5th,  
4 2020. Do you know anything about the context of  
5 the document, how it was prepared or its  
6 purpose?

7 A (MP) No, I do not.

8 Q Okay. I'll ask you -- appreciating those  
9 limitations, I'll just ask you about a couple of  
10 points that are made in the second portion,  
11 second page of the document.

12 MR. ISAAC: Mr. Commissioner, if we could mark this  
13 as the next exhibit.

14 THE REGISTRAR: The next number is 430,  
15 Mr. Commissioner.

16 THE COMMISSIONER: Thank you.

17 **EXHIBIT 430: WLTM Brief - Department of**  
18 **Finance, March 5, 2020**

19 MR. ISAAC:

20 Q I'd just like to turn to the second page of this  
21 document. There's a portion here that begins on  
22 the previous page that's described as "Observed  
23 Money Laundering Terrorist Financing Methods."  
24 So this is based on the data which was provided  
25 to us, at least a more up to date document and

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1                   it refers to three typologies based on the  
2                   source. I'd like to ask about the second  
3                   typology that's described here which is the  
4                   placement of dirty money into a white label ATM  
5                   by a business owner involved in criminal  
6                   activity or with connections to organized crime.  
7                   And then it goes on to list some support for  
8                   this typology and examples of it. If you look  
9                   down about halfway through the paragraph it  
10                  says:

11                         "There are no hard statistics for how  
12                         often this might be happening."

13                  And this is laundering through a criminal  
14                  activity. And then it refers back to the  
15                  Project Scot report and the estimate of 315 --  
16                  sorry, of the 5 percent ownership and the  
17                  \$315 million number. And then it goes on to  
18                  give one example of a case in 2014 where it says  
19                  Winnipeg organized crime rings took dirty money  
20                  and cleaned it through the use of the ATM. I  
21                  would just like to ask briefly, I take it -- are  
22                  you aware of any hard statistics to support the  
23                  315 million to \$1 billion estimate in the  
24                  Project Scot report that we saw?

25                  A       (MP) No, I'm not. I'm not.

1 Q Then it refers to the 2014, this Winnipeg case  
2 that's referred to here. Are you familiar at  
3 all with that case?

4 A (MP) Well, I believe that that case is the one  
5 that I just explained.

6 Q Okay. Are you -- and I expect we will hear, I'm  
7 going to ask shortly for Mr. Chandler's  
8 perspective. But based on the range of  
9 \$315 million to a billion and the extent of  
10 criminal control referred to in the Project Scot  
11 report, do you ever any understanding of whether  
12 or not there have been other charges,  
13 investigations or prosecutions specifically  
14 relating to white label ATMs and the alleged  
15 laundering of money through them other than the  
16 examples that you have referred to, Ms. Paddon?

17 A (MP) I'm sorry, was that question for me?

18 Q Yes. Sorry, I'm not sure if my audio may have  
19 broken up. I'm wondering whether or not -- and  
20 I appreciate you can only speak to your own  
21 personal knowledge, but aside from the examples  
22 you referred to, one of them is one of the  
23 examples referred to here, are you aware of any  
24 other convictions or prosecutions regarding  
25 laundering of funds through white label ATMs?

1           A       (MP) Myself -- there are other files out there.

2                   I have not reviewed the other files. I mean, in  
3                   the years that I was in proceeds of crime there  
4                   were a number of files that did touch on white  
5                   label ATMs. They may not be the main focus of,  
6                   but often organized crime groups would use white  
7                   label ATMs to launder their funds. One thing I  
8                   have noted in a recent investigation we had  
9                   where it was an illegal gaming house that was  
10                  being run and there was a white label ATM  
11                  sitting inside this illegal gaming house. So  
12                  they do come up and they are involved in some of  
13                  these investigations.

14           Q       I expect that one of the perspectives we may  
15                   hear is that proximity, so you'll recall that  
16                   there were two aspects in the Project Scot  
17                   report, one was the alleged control of white  
18                   label ATMs of the sector and the second being  
19                   the actual potential use of those white label  
20                   ATMs to launder. And that second example that  
21                   you gave, would that be an instance where not to  
22                   say guilt by proximity but where the  
23                   circumstances of that were where the white label  
24                   ATM may have been in a business to which there  
25                   was criminal connection but where there was no

1                   specific indication that the machine itself was  
2                   being used to launder money? Would that be  
3                   accurate?

4           A       Yes, that would be correct.

5           Q       Okay. Mr. Chandler, I'd like to turn to you  
6                   now. Have you also had an opportunity to review  
7                   this 2008 RCMP report as well as the March 2020  
8                   Department of Finance document that we are  
9                   looking at now?

10          A       (CC) I have, yes.

11          Q       Okay. I'd like to ask what your perspective is  
12                   on the risks attributed to the white label ATM  
13                   industry and the extent to which they could be  
14                   or are actually being used to launder money in  
15                   Canada whether as referenced in the reports that  
16                   we've looked at our otherwise. And before you  
17                   do so, you have provided a couple of documents  
18                   to the commission and if it would be helpful at  
19                   any moment to use those to guide your testimony  
20                   please let me know I'd be happy to bring those  
21                   documents up.

22          A       (CC) That's great. Thank you, Nicholas, and  
23                   I'll ask for one in a moment. Honestly I'm just  
24                   having a little hard time composing myself.  
25                   With all due respect to Ms. Paddon's vast

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1                   experience and contributions to our legal system  
2                   and I appreciate all of that, what I heard was  
3                   in support for the report, and when I read the  
4                   report it appears to be fact-based and  
5                   evidence-based up to the point that organized  
6                   criminals have influence over people who may  
7                   have an ATM in their establishment and it stops  
8                   there. Then it makes a leap to therefore  
9                   300 million to a billion dollars a year is being  
10                  money laundered through ATMs. And both the  
11                  report and Ms. Paddon's testimony, to me at  
12                  least, are completely devoid of any evidence  
13                  that people are actually money laundering  
14                  through white label ATMs. So I really struggle  
15                  with this.

16                               When I look at the estimate provided, the  
17                               300 million to 1 billion per annum, firstly,  
18                               that's a report in 2008. The industry has been  
19                               around since '96. So in the 12 years prior to  
20                               that I'm not aware of -- there was maybe one  
21                               money laundering case for three or four ATMs in  
22                               Québec that I had heard of prior to that. And  
23                               then since this report we see a claim of one  
24                               instance in Winnipeg for six ATMs. So with my  
25                               math, in the 13 years since this report was

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1 published there should have been 4 billion to  
2 \$13 billion laundered through white label ATMs.  
3 And it seems to me that either that number is  
4 completely dead wrong or we have a terrible  
5 enforcement problem that, you know, we've caught  
6 six ATMs in Winnipeg in 2014. So I'm really  
7 struggling to compose myself, frankly. So  
8 that's the impression I have. Just a quick note  
9 on the casino, the 80 casino ATMs reference. I  
10 would note that to operate an ATM in a casino in  
11 British Columbia you not only need to the comply  
12 with the Interac regulations but you need to  
13 comply with the BC Gaming Commission  
14 regulations, and it is a much, much higher  
15 standard, and for that reason many ATM operators  
16 do not even attempt to operate ATMs in casinos.  
17 We did for a number of years. We stopped doing  
18 it when our ownership changed and my new owners  
19 didn't want anything to do with that. It was a  
20 lot of work and a lot of privacy that you give  
21 up to participate. And I would put to you that  
22 if the gaming commission deep dive could not  
23 uncover a bad guy there, it's highly unlikely  
24 that the ATM industry would. So just with  
25 respect to 80 casino ATMs I would put that to

1                   you. Nicholas, do you have the one-pager that I  
2                   provided you?

3           MR. ISAAC: Yes. Madam Registrar, if we could bring  
4           up the document at tab 31, please.

5           Q     Is this the document that you prepared,  
6           Mr. Chandler?

7           A     (CC) It is.

8           MR. ISAAC: If we could have that marked, please, as  
9           neck exhibit.

10          THE COMMISSIONER: Very well, 431.

11          THE REGISTRAR: Exhibit 431.

12                   **EXHIBIT 431: ATMs in Context: Debunking the**  
13                   **myth that ATMs present a material risk for**  
14                   **organized crime money laundering**

15          MR. ISAAC:

16          Q     Please go ahead, Mr. Chandler.

17          A     (CC) For me what's missing in these kinds of  
18               discussions is the ways businesses can get into  
19               the bank. So what we heard is that organized  
20               criminals are generating proceeds of crime and  
21               those dollars from crime that they have  
22               difficulty but they try to get into the banking  
23               system, and I completely agree with that. If we  
24               go to the second column, what we've talked about  
25               is legitimate businesses. These are typically

1 registered businesses. They may have a liquor  
2 licence. They may have a video lottery licence.  
3 They may have a BC gaming licence. They would  
4 have tax numbers. They are often considered  
5 clean business owners and these are what I think  
6 Ms. Paddon was referring to as either willing  
7 collaborators or coerced and extorted parties  
8 where organized crime will influence and use  
9 these folks. I think this is what they're  
10 estimating is 5 percent of the market.

11 And so the concern then is they can mingle  
12 their proceeds of crime with this business money  
13 and get it into the bank. So if I'm  
14 representing the RCMP's position well, I'm in  
15 agreement up to that point.

16 We get into how the business then gets the  
17 money in the bank. And there are four ways to  
18 do that. The first three are all directly at  
19 the bank. So you can take money and go to the  
20 bank ATM and you can deposit it as anonymously  
21 as putting money in a white label ATMs. You  
22 stand in front of the ATM and you deposit your  
23 cash into the ATM. The second is through a  
24 night depository. You simply put the money with  
25 the deposit slip into a bag, you zip it closed

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1 and as anonymously as a white label ATM you drop  
2 the bag into the night depository. The third is  
3 you go to the bank teller and you deposit the  
4 money there. And those three are all directly  
5 at the bank. So you would deposit those into  
6 any bank account of that business. So the  
7 business may have multiple bank accounts, the  
8 person making those deposits can deposit into  
9 one of those bank accounts. The quality of the  
10 cash and the denominations, for those three  
11 sources they can use any quality of cash and any  
12 denomination. And so if I step back to white  
13 label ATMs they cannot -- they can deposit money  
14 into the bank, of course, electronically, but  
15 they can only deposit to one single Canadian  
16 bank account. It is not anonymous. It is known  
17 by us and by the processors and it's in the  
18 documentation that's provided to Interac. There  
19 is no opportunity to allocate the money amongst  
20 different bank accounts or to spread it amongst  
21 different bank accounts. With respect to  
22 denominations and quality, there is a severe  
23 restriction here. So number one, the money has  
24 to be good quality. It has to be flat and  
25 undamaged. If folks were rolling up their

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1                   dollar bills or 20 dollars bills and using them  
2                   for other purposes and then they don't lie flat  
3                   they are going to jam the ATM and they are  
4                   unworkable. If the bills are damaged they are  
5                   unworkable. From a denomination perspective  
6                   virtually all of the ATMS, the white label ATMs,  
7                   with a few exceptions are distributing only  
8                   \$20 bills. So unless the organized crime is  
9                   only selling their criminal activity in  
10                  \$20 bills they would still have a significant  
11                  problem with every other denomination of  
12                  proceeds they collected. So that's a  
13                  significant distinction between the other three  
14                  ways to get money in the bank. Now, these are  
15                  regulated. The first three or regulated by *The*  
16                  *Bank Act* and FINTRAC. They have what we're  
17                  calling a low risk perspective which is less  
18                  than \$10,000 a day in cash or, you know, not  
19                  suspicious. And they are subject to KYC  
20                  documents to open that bank account. Those  
21                  three also have a high risk component. So if  
22                  someone deposits more than 10,000 in cash or  
23                  they are deemed by the bank teller to be  
24                  suspicious they are asked to fill out a source  
25                  of funds declaration for FINTRAC. Ms. Paddon,

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1                   when she referred to the source of funds  
2                   declaration for white label ATMs said that  
3                   people could lie and they can just say whatever  
4                   they wanted on there. I'm not sure how our  
5                   source of funds declaration that's signed by a  
6                   cash owner is different than the source of funds  
7                   declaration collected by FINTRAC, and perhaps  
8                   she can share with me the difference.

9                   And that's really the two stages that I'm  
10                  aware of for the first three methods of getting  
11                  cash in the bank. Now, the fourth method which  
12                  is the ATMs, they are regulated by Interac.  
13                  Interac has the power to turn them off and we  
14                  cannot exist if we are not connected through  
15                  Interac. Those ATMs are subject to --  
16                  indirectly subject to all of the same rules as  
17                  the bank account, first three, because the ATM  
18                  must settle into a single Canadian bank account.  
19                  Therefore, whoever the cash owner is had to have  
20                  passed the bank's KYC to be able to open that  
21                  bank account by definition. And in addition to  
22                  those there are incremental KYC documents that  
23                  are required for each and every cash owner in  
24                  the white label ATM business. There's a source  
25                  of funds declaration required for each and every

1 ATM in the white label business, and for high  
2 risk, what we're calling high risk in our world  
3 where the threshold is half, 50 percent of what  
4 it is in the banking world, \$5,000 a day, or  
5 even less than \$5,000 per day if the same cash  
6 owner has multiple ATMs we require them to  
7 provide a criminal background check that it's  
8 free of a huge list of finance-related crimes  
9 that was developed in conjunction with the RCMP.

10 In addition to that, every single ATM  
11 deposit is tracked and recorded by a third party  
12 processor Interac member. There's no way to  
13 keep a second set of books on what went through  
14 your ATM. And all of this information is  
15 provided to a single source which is the Interac  
16 Association. It's audited annually and it's  
17 made securely available in a secure and  
18 confidential manner at the request of police.

19 So when I look at this, I find it very  
20 difficult to understand why this 2008 report  
21 which is in ten years of lobbying for this  
22 industry that report has been kept from me. No  
23 one has provided it to me until now. And I  
24 would put to you the reason for that is because  
25 it's completely devoid of context and it's

1 completely devoid of evidence that people are  
2 doing this in large dollars, although it's full  
3 of innuendo and inference that people are doing  
4 it. So I would put to you that I have -- in all  
5 of my travels since 2008 I have not found  
6 anything to support large-scale money laundering  
7 in white label ATMs. I don't believe it's a  
8 likely channel for it. We're of course not  
9 saying it's not possible and we're not saying  
10 there's none, but I don't believe there's any  
11 corner of society, whether it's business,  
12 government or in fact the police, where there's  
13 no corruption, and in fact today we saw a CIBC  
14 teller defrauded a million 7 from the bank. So  
15 we are not saying we have a zero standard and we  
16 don't think we should be held to a zero standard  
17 because we don't believe any other sector is,  
18 but we are quite confident, and I see no  
19 evidence to the contrary, that this is not a  
20 significant channel for money laundering for  
21 organized crime or anyone else.

22 Q Mr. Chandler, I'm not sure -- not to put you on  
23 the spot, Ms. Paddon, I had you in the spotlight  
24 for sometime. But if there's anything specific  
25 arising from what Mr. Chandler just said that

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1                   you would like to address; otherwise I propose  
2                   to perhaps move on to look at some of the  
3                   regulations, the specific regulation that  
4                   Interac has in place. Ms. Paddon, is there  
5                   anything specific that you would like to address  
6                   in what Mr. Chandler said?

7           A       (MP) The only thing I would say is that from a  
8                   police perspective criminal records and having a  
9                   criminal conviction is your best case scenario.  
10                  However, in any police investigation there is no  
11                  guarantee it will result in a criminal charge  
12                  being laid and there being a conviction on that  
13                  particular charge. Money laundering is very  
14                  complicated as I mentioned before. It's very  
15                  difficult to investigate, and as a result there  
16                  are not many money laundering convictions. And  
17                  often what you'll see in some of these cases  
18                  that we work, investigations that we work, these  
19                  people may be involved in organized crime, they  
20                  maybe be using white label ATMs, but there are  
21                  other methods of which the police can disrupt  
22                  some of these organized crime groups without it  
23                  resulting in laying a charge, like, for example,  
24                  taking away white label ATMs or fining, those  
25                  kind of things. I mean, in our case we don't

1 fine, but ... So there may not be a lot of cases  
2 out there where you may say oh, look, you know,  
3 all I'm seeing is one conviction, two  
4 convictions or an old case. In that whole  
5 process behind the scenes there may be a number  
6 of investigations that actually are occurring  
7 that do have that element of organized crime or  
8 white label ATMs but may not in the end result  
9 in charges. So the general public wouldn't know  
10 that they existed, obviously. That was just a  
11 comment that I thought I'd mention.

12 Q Thank you. And, Mr. Chandler, I took from what  
13 you said and please let me know if I have this  
14 correct, that you were not saying that money  
15 laundering through ATMs is impossible but rather  
16 that it is unlikely and that there are currently  
17 not in law but through Interac's regulations a  
18 number of procedural safeguards that are in  
19 place currently. Is that accurate?

20 A (CC) Yes. We don't believe it's a smart place  
21 for criminals because of the documentation that  
22 would allow them to be we believe convicted  
23 readily if they were investigated. And to  
24 Ms. Paddon's point just now that there may be  
25 some investigations across Canada into ATMs, I



1                   apologize. There is one last -- Madam  
2                   Registrar, if we could bring up the document at  
3                   tab 32 please. We can bring this document down.  
4                   Mr. Chandler, you also provided us with a copy  
5                   of a submission that was prepared by the ATM  
6                   ministry association for -- in connection with  
7                   the Québec consultation; is that correct?

8                   A     (KM) Yes.

9                   Q     And is this a copy of that?

10                  A     (KM) Yes.

11                  MR. ISAAC: If we mark that please as the next  
12                  exhibit.

13                  THE COMMISSIONER: We will. I've lost track.

14                  THE REGISTRAR: 432, Mr. Commissioner.

15                  THE COMMISSIONER: Thank you, 432.

16                               **EXHIBIT 432: Actual versus Perceived Risks of**  
17                               **Money Laundering at White-Label ATMs in Canada -**  
18                               **2017**

19                  MR. ISAAC:

20                  Q     Thank you. Mr. Morris, the next documents we're  
21                       going to be reference, Mr. Commissioner, are the  
22                       ones that I asked not be live-streamed. And if  
23                       we could pull up document INT1, please. And,  
24                       Mr. Morris, when you can see that if you can  
25                       tell me, confirm that those are at copy of the

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1 Interac AML regulations?

2 MR. ISAAC: Okay. If we can please mark that as next  
3 exhibit.

4 THE COMMISSIONER: Very well.

5 THE REGISTRAR: 433.

6 **EXHIBIT 433: Interac - WLATM AML Operating**  
7 **Regulations, adopted March 1, 2009**

8 MR. ISAAC:

9 Q And Interac also provided a copy, an overview  
10 summary of these regulations. I believe that's  
11 the document at tab 37, please. If we could  
12 pull that up, also not on the live stream.  
13 Scroll down. Mr. Morris, are those -- is that  
14 the overview of the regulations?

15 A (KM) Yes, it is.

16 MR. ISAAC: Please mark that as the next exhibit.

17 THE COMMISSIONER: 434.

18 THE REGISTRAR: 434.

19 **EXHIBIT 434: Interac - Overview WLCO Regs, 2020**

20 MR. ISAAC:

21 Q Now, Mr. Morris, in the interests of time, I  
22 would like to focus in on perhaps the key areas,  
23 but if you could just describe the key elements  
24 of the regulations, please.

25 A (KM) Yeah, I'm happy to. Maybe I'll take a

1 moment as we do that just to provide a bit of  
2 back story on how we got to the requirements  
3 that we have because I think it is relevant to  
4 the conversation.

5 So we adopted the rules as they exist on our  
6 books in March of 2009. And at that time the  
7 intents was to establish some protocols really  
8 around the collection and review of information  
9 relative to white label ABMs. That is, you  
10 know, as we've talked about ABMs that are loaded  
11 with funds from a cash owner that is not a  
12 regulated financial institution. And you know  
13 that effort was initiated really upon request  
14 from the federal Department of Finance and that  
15 was following a 2008 report from the  
16 International Financial Action Tax Force where  
17 that report had identified the white label ABM  
18 sector in Canada as a potential source of money  
19 laundering risk and indeed recommended  
20 strengthening controls to address those risks.  
21 And at the time as we were engaged we understand  
22 that the government favoured an industry-led  
23 solution if one could be achieved as an  
24 alternative to pursuing a public policy or  
25 regulatory response to the issue. And so the

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1                   resulting regulations that were adopted in 2009  
2                   were the result of fairly extensive discussions  
3                   among industry participants, including a number  
4                   of ABM operators, processors, Visa and  
5                   Mastercard as you noted earlier, the ATM  
6                   Industry Association, as well as federal  
7                   government departments and agencies, so the  
8                   federal Department of Finance, the RCMP and  
9                   FINTRAC. And, you know, through a series of  
10                  working sessions, collaborative policy  
11                  development exercise over the span of a number  
12                  of months the result of that industry-government  
13                  collaboration was the creation of the  
14                  requirements in respect of white label ABM cash  
15                  owners that we have in what we call our  
16                  operating regulations that are reflected in  
17                  Interac Corp.'s operating regulations. And so  
18                  they include a number of requirements that are  
19                  intended to address a range of the risks as they  
20                  have been talked about. They really do,  
21                  Mr. Isaac, cover four broad areas. They speak  
22                  to requirements in relation to customer due  
23                  diligence, criminal background checks, source of  
24                  funds declarations and reporting and reviews to  
25                  promote active compliance. They have been, as I

1                   say, in our rule book as they stand since 2009  
2                   and it is a general expectation that we hold and  
3                   there is a compliance regime in place to promote  
4                   that all acquirers need those requirements as a  
5                   condition of connecting and ultimately  
6                   maintaining an ABM in the Interac cash  
7                   dispensing network.

8                   The regulations themselves speak to  
9                   requirements relating to white label ABM cash  
10                  owners, so in other words, the parties that own  
11                  the cash that is loaded into an ABM connected to  
12                  our service, in particular where that party is  
13                  not a regulated financial institution. Those  
14                  regulations demand that white label ABM  
15                  acquirers verify the identity of all white label  
16                  cash owners. They must obtain a source of funds  
17                  declaration for each white label ABM that they  
18                  connect to the Interac network. That source of  
19                  funds declaration is to be maintained with each  
20                  white label ABM cash owner's documentation and  
21                  must be updated when changes occur. Criminal  
22                  records checks are required in respect of  
23                  designated high-risk cash owners. And so our  
24                  regulations classify cash owners into one of two  
25                  risk categories based on a number of criteria.

1                   And so to be deemed low risk and avoid those  
2                   criminal checks a cash owner must have one of  
3                   the following: it either supplies cash own to a  
4                   single ABM connected to the service. In the  
5                   instance that it supplies cash to two to four  
6                   ABMs that the total average daily settlement  
7                   volume across all of those ABMs in aggregate is  
8                   less than \$5,000; that they have a account  
9                   records that establish a consistent and circular  
10                  flow of funds used for loading in that ABM or  
11                  those ABMs. In the instance that it is a  
12                  publicly traded company it falls into the low  
13                  risk category. If they have been certified and  
14                  are able to provide a copy of a provincial or  
15                  federal gaming certificate or if they are a  
16                  public body, essentially if they are a  
17                  government department or agency, a body of  
18                  government. And so unless you can fit into one  
19                  of those categories, you are deemed under our  
20                  rule set to be a high-risk cash owner and you  
21                  are subject to the criminal background checks  
22                  that then apply. Where the cash owner is a  
23                  business or another entity not an individual,  
24                  that criminal background check must be obtained  
25                  on all directors and individuals who control or

1 own more than 25 percent of the entity, and in  
2 the event that the entity does not have  
3 directors or individuals who own or control  
4 25 percent or more then it must be obtained on  
5 all individuals who have signing authority over  
6 the account that is used to obtain cash for  
7 loading into the ABM.

8 We do have procedures that on an annual  
9 basis require acquirers to undergo a compliance  
10 review. That compliance review must be  
11 conducted by an independent auditor with  
12 appropriate professional designation. The  
13 intent is to confirm the documentation has been  
14 collected and the practices are maintained in  
15 accordance with those requirements. Identified  
16 non-compliance or indeed any suspicion,  
17 meaningful suspicion of criminal activity must  
18 be reported by the auditor to Interac so that  
19 Interac can take appropriate steps with relevant  
20 authorities as may be the case.

21 I can say that we have not received or I am  
22 not aware that we have received any such reports  
23 of possible criminal activity during the time  
24 that the operating regulations have been in  
25 effect.

1                   And so, Mr. Isaac, that in a nutshell is the  
2                   regime that exists in Interac's rules along with  
3                   a little bit of a tale about the origins. You  
4                   know, as we were -- I guess, you know, as Canada  
5                   and the federal government was evaluating the  
6                   best means of going forward to address the risks  
7                   that had been identified in the FATF  
8                   investigation of [indiscernible] believe that  
9                   led to the 2008 report and then ultimately  
10                  concluding through that collaborative process  
11                  that this was a set of requirements and  
12                  obligations that were suited to managing and  
13                  mitigating the identified risks at hand.

14                  Q    Thank you, Mr. Morris. I have a couple of  
15                        specific questions just to follow up on some of  
16                        the points that you raised about the rules that  
17                        are currently in place. I'd like to start, one  
18                        of the points you mentioned was around criminal  
19                        record checks as well as the cash and the risk  
20                        rating. And I think I have your evidence was  
21                        that under the regulations it is the high-risk  
22                        cash owner that is are subject to criminal  
23                        record checks. Is that correct?

24                  A    (KM) Yes, that's correct.

25                  Q    And I should say again just to clarify because I

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1 think we'll look at another document shortly,  
2 when we say high-risk cash owners what that  
3 means is it's not an assessment of any  
4 criminality or impugn the character of anyone  
5 who may be designated a high-risk cash owner;  
6 it's simply by way of application of the  
7 criteria in the regulations. Is that correct?

8 A (KM) That's correct. That's correct. So a cash  
9 owner for whom none of those conditions apply  
10 then falls into the high-risk category and is  
11 subject to the criminal records checks that are  
12 prescribed.

13 MR. ISAAC: Madam Registrar, if we could bring up the  
14 document at tab 26. This is a document not to  
15 be live-streamed please.

16 Q Mr. Morris, the commission requested a list of  
17 all of the cash owners that had been -- that  
18 fell within that criteria of a high-risk cash  
19 owner in British Columbia. Can you confirm that  
20 this is a list of those cash owners?

21 A (KM) Yes, it does appear to be, Mr. Isaac.

22 MR. ISAAC: Thank you. If we could please mark that  
23 as the next exhibit.

24 THE COMMISSIONER: Very well.

25 THE REGISTRAR: 435, Mr. Commissioner.

1 THE COMMISSIONER: Thank you.

2 **EXHIBIT 435: Interac - Master BC High Risk Cash**  
3 **Owners, July 22, 2020**

4 MR. ISAAC:

5 Q There are 84 high-risk cash owners indicated on  
6 this list. Is that your understanding as well,  
7 Mr. Morris?

8 A (KM) That is correct. That's right. Our  
9 records indicate 84 high-risk cash owners  
10 operating in the province.

11 MR. ISAAC: We no longer need this document up, Madam  
12 Registrar.

13 Q Just a couple of questions. We will briefly in  
14 the interest of time comment on the Québec  
15 regime, but you understand that one of the  
16 measures that Québec has implemented on a  
17 provincial basis is a criminal record and  
18 suitability checks on all white label ATM  
19 owners, cash owners. Is that your  
20 understanding, Mr. Morris?

21 A (KM) Yes.

22 Q I just want to understand in terms of the  
23 criteria, you mentioned there are a number of  
24 different criteria that can result in a cash  
25 owner being designated as either high risk or

1 low risk. One of them is about how many white  
2 label ATMs the cash owner supplies and the other  
3 relates to volume. Based on those criteria just  
4 in terms of their application, could it be if  
5 you have -- you could have an entity or  
6 individual that owns a single -- or I should say  
7 not owns, supplies the cash for a single ATM  
8 with no limit on the amount that's processed  
9 through that ATM provided it's one cash owner  
10 supplying one white label ATM there would be no  
11 criminal record check on that cash owner; is  
12 that correct?

13 A (MP) That is correct.

14 Q And similarly an entity or individual could have  
15 four ATMs with a combined settlement value of  
16 just under \$5,000 a day, I think that means  
17 about \$1.8 million a year, and again provided  
18 they met the other criteria they could also be  
19 categorized as low risk; is that correct?

20 A (KM) That's correct.

21 Q And this is a question perhaps for both you and  
22 Mr. Chandler. In terms of the potential for a  
23 potential organized crime group to split  
24 ownership or to have nominees to try to  
25 circumvent some of these rule, is there any

1                   measures in place or anything you can describe  
2                   in terms of whether that's a potential or how  
3                   that might be detected through either the  
4                   regulations or otherwise? And I invite both --  
5                   any of the panelists to comment on that. I'll  
6                   choose Mr. Morris, if you would like to go  
7                   first.

8                   A     (KM) I thought Mr. Chandler was going to jump in  
9                   and I thought he might be better placed actually  
10                  to respond.

11                  Q     Perfect. Mr. Chandler, I'm sure you won't  
12                  begrudge the opportunity, so please feel free.

13                  A     (CC) Well, as far as splitting, I had it on the  
14                  schedule that we looked at, the ATM deposits to  
15                  one account only. It cannot be split in any  
16                  way. Some folks have confused splitting with  
17                  the fees. So if there's a \$3 or \$2 surcharge  
18                  fee, that fee amount may be split between a  
19                  number of parties. But we're talking here about  
20                  the money that's put into the ATM for dispensing  
21                  and that money can only be deposited to a single  
22                  Canadian bank account.

23                  Q     Thank you. Mr. Morris, you referred to an  
24                  annual review process, an independent audit  
25                  process that produces -- checks the compliance

1 with these regulations, and you indicated that  
2 that process had not resulted in the more than  
3 ten years since the regulations were in place  
4 any referrals of any criminals, suspected  
5 criminal behaviour; is that correct?

6 A (KM) That's correct. That's right.

7 Q Has it resulted in any referrals regarding  
8 non-compliance with the anti-money laundering  
9 regulations?

10 A (KM) I do not believe that we have had through  
11 that process any direct reports of  
12 non-compliance through that exercise.

13 Q Is there a distinction? You said "direct  
14 reports." Is there another form that those  
15 reports might take place?

16 A (KM) No, sorry, I merely meant reports from the  
17 auditor received by Interac in relation to  
18 criminal activity or compliance.

19 Q And as I understand the ultimate consequence  
20 under the regulations, the sort of big stick  
21 that could result in non-compliance would be a  
22 disconnection of the ABM or ATM; is that  
23 correct?

24 A (KM) That's right. So our measures go so far as  
25 providing us the opportunity to disconnect an

1                   ATM from the network. We would obviously in the  
2                   event that we were aware of instances of money  
3                   laundering activity or the suspicion of money  
4                   laundering activity or the assertions on a part  
5                   of an auditor of ongoing criminal activity, we  
6                   would refer those instances to law enforcement  
7                   and authorities. So our powers are limited to  
8                   the ability to disconnect machines from the  
9                   network to sever the ability, you know, of an  
10                  acquirer or machine to do business per se. We  
11                  would then expect law enforcement and the courts  
12                  to take the matter further.

13                Q    Has Interac to your knowledge in the years in  
14                    which these regulations have been in place ever  
15                    disconnected an ABM for non-compliance with  
16                    these regulations or for suspected money  
17                    laundering or made any referrals for any of  
18                    those reasons to law enforcement?

19                A    (KM) No, I do not believe that we have.

20                Q    Mr. Morris, you also as I understand it there's  
21                    an information and recordkeeping component that  
22                    Mr. Chandler referred to and you also described  
23                    as part of this in term of collecting the cash  
24                    declarations, the ownership information. I  
25                    understand that Interac created a special

1 security unit to liaise with law enforcement and  
2 act as sort of an information hub as part of  
3 this. Is that correct?

4 A (KM) So we do have a business unit internally  
5 whose job it is it is to address payment fraud  
6 and financial crime, including serving as a  
7 liaison between Interac and, you know, the  
8 broader stakeholders community, including our  
9 financial institution partners, law enforcement  
10 and others. And so that group has been in  
11 existence for quite sometime, although I will  
12 say it's primary activities just based on our  
13 experience relate very much to the prevention,  
14 detection, management and ongoing investigation  
15 of payment card fraud or, you know, digital  
16 payments fraud as opposed to money laundering.  
17 And in fact I'm not aware that we have had a  
18 request to become involved in any individual  
19 money laundering-related investigation over the  
20 course of its existence.

21 We do provide support to law enforcement  
22 directly and their investigations through the  
23 fulfillment of court orders to investigate  
24 criminal activity. We do have a history in  
25 collaboration with our financial institution

1 partners of working with law enforcement to  
2 prevent, detect and manage fraud and related  
3 activity. We do have a history of providing  
4 education to the law enforcement community on  
5 the means of identifying and detecting criminal  
6 activity in the payment space. We have a  
7 history of providing victim impact statements  
8 during trial proceedings with the aim of seeking  
9 convictions for those on trial for payment and  
10 related fraud. And I would say that law  
11 enforcement and our relationship with law  
12 enforcement also serves as a conduit to further  
13 consumer education. And so consumers are --  
14 absolutely trust the messaging from law  
15 enforcement, and so to the extent there is  
16 ability to jointly develop message sets on these  
17 issues that can be shared out into the community  
18 that turns out to be helpful. So I would say  
19 that over time we have fostered what we hope is  
20 perceived to be a very interactive and  
21 collaborative relationship with law enforcement  
22 at various levels and that has indeed become  
23 quite essential to our ongoing management and  
24 mitigation of risk within the Interac network  
25 and the services that we operate.



1           A       (KM) Yeah, I'm happy to chat. I would say that  
2                   our interaction with Québec authorities has not  
3                   been particularly extensive. We are certainly  
4                   aware of the requirements that exist in the  
5                   province of Québec. We have had some  
6                   interaction over time with the AMF who is  
7                   charged in Québec with administering those  
8                   requirements in a market-facing perspective. We  
9                   have at times acted as a liaison or a conduit to  
10                  assist them in communications to the white label  
11                  community communicating provincial registration  
12                  and related requirements in respect of white  
13                  label ABMs serving as a conduit to help Québec  
14                  regulators reach across the white label ABM  
15                  community. And indeed we have participated in  
16                  recent years in some effort and dialogue  
17                  alongside the ATMIA and industry participants in  
18                  evaluating the extent of possible overlap  
19                  between the Québec requirements and our own  
20                  operating regulations. But that really is the  
21                  extent of our direct experience with the regime  
22                  in the province of Québec, and so perhaps I'll  
23                  limit my comments to that.

24           Q       And, Mr. Chandler, I appreciate the report that  
25                   we looked at, the 2017, we didn't go through the

1 details of it, but it would be fair to say that  
2 you and the ATM Industry Association were not in  
3 favour of inclusion as part of the Québec  
4 provincial regime; is that correct?

5 A (CC) Yeah, we became aware of Québec adding ATMs  
6 to their money service business act and to this  
7 day I believe -- it may not be the case anymore,  
8 but I believe it's the only jurisdiction in the  
9 world that expanded the definition of money  
10 service business to include white label ATMs.

11 We feel that it's wholly redundant with the  
12 Interac regulations and we've been expressing  
13 that to folks at the government and the AMF who  
14 are administering it. We also worked closely  
15 with the AMF to help them put their model in  
16 place once the act was signed because they were  
17 having extreme difficulties in implementing the  
18 legislation as planned. So they were tasked  
19 with having every ATM operator get a permit, but  
20 they had no clue where these ATM operators were  
21 and who they were. So they were having  
22 challenges with completeness. They suffered  
23 some scandalous sounding headlines because they  
24 weren't able to -- they had created a  
25 perception, or a perception had been created

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1                   rather, that if you didn't have this permit that  
2                   you were somehow, you know, untoward. And again  
3                   no basis in fact underlying that. But I guess  
4                   given that the law was you needed a permit, if  
5                   you didn't have a permit you were technically  
6                   illegal. But we saw in the *Montreal Sun*, I  
7                   believe, show a picture of an ATM without a  
8                   permit and then put pictures of known mobsters  
9                   next to it and make some big inference. So this  
10                  regime in the last ten years has extracted about  
11                  \$10 million from thousands of small businesses  
12                  in Québec by charging annual permit fees and  
13                  charging criminal check fees for the Sûreté du  
14                  Québec to do criminal checks, and to my  
15                  knowledge there are zero instances of charges or  
16                  pursuit of activity for money laundering in  
17                  Québec. And the victory, if they have one, is  
18                  that the act has expansive powers in it for  
19                  persecuting folks by association, and so my  
20                  understanding is that they have in the last  
21                  10 years or 11 years they have denied something  
22                  in the order of 45 people the right to have a  
23                  permit not because they were a criminal or they  
24                  were a suspect but because they were somehow  
25                  affiliated, associated with someone that was.

1                   I was recently speaking with a Québec member  
2                   of the Ministry of Finance and he said listen,  
3                   you know, he said his nephew, unfortunately his  
4                   nephew had been charged with a financial crime  
5                   and convicted, and he said, if we had the same  
6                   standard for folks in the Ministry of Finance I  
7                   couldn't work here. So it's really again  
8                   difficult to understand this incredible standard  
9                   that has been put on an industry that has -- you  
10                  know, there's in 20 years of operating we have  
11                  one case in Winnipeg for six ATMs of money  
12                  laundering. So somewhere along the way, the  
13                  perception has grown into a life of its own far  
14                  beyond any evidence that I've seen in the  
15                  15 years I've been in this industry.

16                Q    I have just one final question just to clarify  
17                  one point and to understand the distinction  
18                  between a self-regulatory regime -- potential  
19                  distinction and a model such as what Québec has  
20                  or information. I understand the information is  
21                  being collected by Interac and is available.  
22                  Mr. Morris, the special security unit that's  
23                  been created to liaise, is it able to provide  
24                  information to law enforcement without a  
25                  production order or is that something that it's

1                   essentially there to coordinate with law  
2                   enforcement should such a production order be  
3                   received? If you could just explain what the  
4                   nature of the information sharing that is  
5                   possible or that occurs by Interac with law  
6                   enforcement. Thank you.

7                   A       (KM) I am happy to. So I do think in general it  
8                   is typical to require a production order. We do  
9                   have terms in our participation agreements that  
10                  do allow us to furnish information to law  
11                  enforcement, government and regulatory  
12                  authorities where legitimate requests are made.  
13                  But there is some formality of adhering to that  
14                  obligation to share information, you know, when  
15                  there is -- in the event of a legitimate  
16                  request. So there is some formality to that  
17                  process that serves as the gate, I suppose.

18                  MR. ISAAC: Thank you. Mr. Commissioner, those are  
19                  all of my questions for these witnesses.

20                  THE COMMISSIONER: All right. Thank you, Mr. Isaac.  
21                  I'll now turn to Ms. Harlingten on behalf of the  
22                  province who has been allocated 25 minutes.

23                  MS. HARLINGTEN: Yes, thank you, Mr. Commissioner.

24                  **EXAMINATION BY MS. HARLINGTEN:**

25                  Q       My first questions are for Mr. Chandler.

1                   Mr. Chandler, I understand you're the incoming  
2                   president for the ATM Industry Association.

3           A       (CC) Yes.

4           Q       And you've also been on the non-executive  
5                   director, on that board of directors of the  
6                   industry association?

7           A       (CC) As a director I've been a director of that  
8                   association since I think 2012.

9           Q       2012?

10          A       (CC) Yeah.

11          Q       And the ATM Industry Association, it has  
12                   advocacy as one of its three key mandates?

13          A       (CC) Yes.

14          Q       And that advocacy that extends to lobbying  
15                   governments to not regulate in the area of ATM  
16                   or white label ATMs?

17          A       (CC) Not specifically. We don't actually have a  
18                   lobby capability. To the extent that we do in  
19                   Canada it's me and I have no lobby experience at  
20                   all. I'm a business owner/operator who has  
21                   really just been passionate about trying to get  
22                   to the truth around why this industry is being  
23                   attacked for something there is no charges or  
24                   evidence of. So I've really become the voice of  
25                   it and have had many meetings with particularly

1 Québec, you know, helped to shape these rules  
2 with the finance department in 2008 and have  
3 worked closely with various members in the AMF  
4 and the government in Québec. We've come close  
5 a number of times, or I felt we've come close a  
6 number of times where members in the Québec  
7 government have been open to removing ATMs from  
8 the act. Most recently as they were planning to  
9 move management from the AMF to the Revenu  
10 Québec. And each time the Sûreté du Québec  
11 without consultation, without sharing any  
12 information behind the scenes suggests that  
13 that's a really bad idea. And to my knowledge,  
14 I think it's now based on this 2008 report that  
15 we saw today and it's the first time that I've  
16 seen it after having asked to see it for  
17 many years.

18 Q In your what sounds to be extensive experience  
19 dealing with this sort of area of regulation --  
20 or non-regulation I should say, are you aware  
21 that the ATM Industry Association appeared  
22 before the House of Commons standing committee  
23 on finance in April of 2018?

24 A (CC) We appeared in front of the senate. Is  
25 that what you're referring to?

1           Q     Perhaps it might assist to see the document  
2                    itself. Madam Registrar, may I ask you to pull  
3                    up the "Confronting Money Laundering and  
4                    Terrorist Financing: Moving Canada Forward"  
5                    report.

6                            Can you see that there, Mr. Chandler?

7           A     (CC) I can.

8           Q     Do you recognize this document?

9           A     (CC) I do not.

10          Q     I'll just take you to if -- I could turn to  
11                    page 71 of that document, Madam Registrar.

12                            You'll see there that the ATM Industry  
13                    Association appeared before this committee in  
14                    April of 2018 and a fellow named Mr. Curt Binns,  
15                    Executive Director, appeared.

16          A     (CC) Yeah.

17          Q     Is that name familiar to you, Mr. Chandler?

18          A     Yeah, Mr. Binns was a part-time employee of the  
19                    ATM Industry Association who conducted the sort  
20                    of the administration for Canada. I'm a bit  
21                    astonished to see his name there as presenting  
22                    to Commons.

23          Q     If you would just indulge me.

24                            Madam Registrar, may I turn to page 23 of  
25                    that document now.

1                   Thank you, Madam Registrar. Just by way of  
2                   background this is a statutory review of the  
3                   *Proceeds of Crime (Money Laundering)* and  
4                   *Terrorist Financing Act*. And you'll see here  
5                   that there's a section, Mr. Chandler, on white  
6                   label automated teller machines, and just as a  
7                   bit of background at the beginning, and then  
8                   under witness testimony it says:

9                   "According to ATM Industry Association the  
10                  ATM industry is subject to several  
11                  regulations of the federal and provincial  
12                  level as well as FINTRAC oversight through  
13                  their connection with financial  
14                  institutions."

15                 And then it recounts the introductory statement  
16                 that was made. I'm just going to carry on  
17                 through that paragraph if you don't mind to the  
18                 sentence beginning with "furthermore."

19                 "The association stated that business  
20                 owners with multiple ATMs or high-volume  
21                 ATMs are required to provide criminal  
22                 background checks and regulations require  
23                 annual audits. They also indicated that  
24                 Québec is the only province in Canada that  
25                 has a *Money Services Business Act* that

1 includes ATMs, white label ATMs and that  
2 they would prefer this act to be repealed  
3 or have ATMs taken out of that act."

4 From your testimony today I take it you would  
5 agree with all of those statements in the  
6 report.

7 A (CC) Yes.

8 Q And you'll see there FINTRAC also appeared  
9 before the committee and they stated "that ATMs  
10 are a way to launder money but conceded it was  
11 difficult to know the extent of the problem."  
12 If I could then just have you turn your  
13 attention to page 30.

14 Madam Registrar, if you could please assist me.  
15 You'll see recommendation number 7 there,  
16 Mr. Chandler. So you see:

17 "That the Government of Canada amend the  
18 *PCMLTFA* --"

19 A Wow.

20 Q "-- so that the armoured car and white  
21 label ATM sector be subject to the AML/ATF  
22 regime as is the case in the United States  
23 and province of Québec respectively."

24 Given your earlier evidence I take it you do not  
25 support this recommendation.

1           A     (CC) I do not in any way shape or form.

2           Q     And that so even though if I understood your  
3                   evidence correctly, and please correct me if I  
4                   understood it wrong, that the procedures in the  
5                   Interac regulation are essentially equivalent to  
6                   those required by FINTRAC?

7           A     (CC) I am not familiar with the detailed  
8                   procedures of FINTRAC. What my evidence was  
9                   that what we're doing through Interac is more  
10                  extensive, so we have KYC that is similar to the  
11                  bank account. FINTRAC my understanding is that  
12                  \$10,000 in cash per day, the person is required  
13                  to do a source of funds. White label ATMs have  
14                  a source of funds for every ATM no matter how  
15                  much it's depositing and high-risk white label  
16                  ATMs have a criminal check. To my knowledge,  
17                  there's no point in the FINTRAC model is anyone  
18                  required to get a criminal check.

19          Q     So if I understand it correctly, is the  
20                  reticence to regulation in this area, is it  
21                  premised solely on the view of the perceived  
22                  risks of money laundering, they're not borne  
23                  out? Is that a fair statement?

24          A     (CC) Yeah, well substantially, yeah. So we have  
25                  an industry that is meeting a standard through

1 the Interac regulations that I would put as  
2 higher than the standard for the three other  
3 methods cash is being put in banks by these same  
4 businesses and, therefore, less attractive, the  
5 least attractive of the four ways to put money  
6 in the bank. And what Québec has done is put  
7 another layer so those same small business  
8 owners are now required to complete duplicate  
9 but not identical documentation and pay fees on  
10 top of that and it's really adding regulation on  
11 top of regulation on top of regulation for a  
12 problem that in my view has not been borne out  
13 with any evidence whatsoever. There were no  
14 instances noted of money laundering in ATMs  
15 prior to these rules and there's one in 2014  
16 since these rules and I cannot for the life of  
17 me comprehend why this sector with that track  
18 record is being subject to this level of  
19 scrutiny and recommendations for more and more  
20 and more regulations.

21 The impetus in 2008 in my understanding was  
22 not because there was money laundering in ATMs.  
23 The impetus was the Financial Action Task Force  
24 report, which I understand was something like  
25 400 pages substantially targeting financial

1 institutions, and in that report there was a  
2 paragraph or a small section that said, we  
3 looked at white label ATMs and there is no  
4 regulation that says you can't money launder in  
5 ATMs. And that is true -- or was true at the  
6 time. And somehow that fact that there was no  
7 documented regulation appears to have morphed  
8 into there is a massive money laundering problem  
9 in white label ATMs, and I have not been able to  
10 this point to figure out what caused that leap  
11 of imagination and we've been suffering under  
12 that ever since. I'll share with you that each  
13 time I've spoken to someone who's adamant that  
14 it's happening, once you really sit them down,  
15 it's not.

16 And a good example is in Québec there was a  
17 gentleman member of the legislature who was  
18 working with the finance minister directly; he  
19 was a former Sûreté du Québec officer. And  
20 after I presented to the Québec legislature, I  
21 asked to speak with him because I learned that  
22 he was the driving force behind adding ATMs.  
23 And we met after that presentation and he shared  
24 with me that he was -- that I didn't really  
25 understand that he was in his job as a Sûreté du

1                    Québec. He was involved in an investigation in  
2                    Sorel, Québec, where they arrested and charged a  
3                    gentleman with \$2 million in money laundering  
4                    and that gentleman had ten bars with ten ATMs.  
5                    And I said great, please explain to me; I really  
6                    want to get to the bottom of this and  
7                    understand. And he stopped and it took quite a  
8                    few minutes for him to really recall the story  
9                    and then as he played back the story, the  
10                    gentleman in question was actually conducting  
11                    his money laundering through his niece, who was  
12                    a bank teller at one of the banks. And once he  
13                    finished recounting the story, I asked him  
14                    politely, and the ATMs? And he said well, he  
15                    had bars with ATMs. And in fact once he really  
16                    sat down and dissected the facts of his case,  
17                    the money laundering was taking place through  
18                    the teller. And I sat there astonished looking  
19                    at this gentleman, saying, you're the one that  
20                    pushed for us to be in the act; can you get us  
21                    out? And he basically said it was too late.

22                    So that's what I've been living with for  
23                    12 years is knowing that that's the impetus for  
24                    us being in that act, and then of course getting  
25                    out of an act once you're in is extremely

1                   difficult. And we have, as I say, made good  
2                   progress at a number of points with various  
3                   governments. I mean, this is of interest to the  
4                   ministers that handle the small business. You  
5                   have 5,000 small businesses being inconvenienced  
6                   and charged for this. As a taxpayer I can't  
7                   understand why the AMF is spending so much time  
8                   and money trying to implement duplicate  
9                   regulations on ATMs when there are so many  
10                  important things in my view they should be  
11                  doing. Now Québec is moving that responsibility  
12                  to Revenu Québec that in my view would have much  
13                  more important and useful things to do than try  
14                  and implement a duplicate regime for an industry  
15                  that has no actual proven problem with money  
16                  laundering. We have an enormous perception  
17                  problem with money laundering. But, I mean, if  
18                  the 2008 report quantum is correct it would  
19                  imply 4 to \$13 billion and there's been one  
20                  charge for six ATMs. Like, it's just -- it's  
21                  beyond comprehension. So I would contend that  
22                  it's just not a place that is attractive.

23                                When we were on the committee in 2008 we  
24                                worked, we had a separate subgroup with RCMP led  
25                                by a gentleman named -- what his name? Denis

1 Fortin was the lead on that. I think he was an  
2 assistant superintendent, if I can recall. We  
3 had a separate workout group with that group to  
4 try and educate them, and I think we had three  
5 offsite meetings with them, and when they  
6 finally understood it, they said oh, we get it;  
7 this is not where organized crime is doing this.  
8 We went back into the large group. Monsieur  
9 Fortin said the same thing to Lynn Hemmings, who  
10 was the deputy director of finance I believe at  
11 the time. And with his, that -- you know, call  
12 it a blessing or whatever, we went ahead and put  
13 in the Interac regulation. So that work took  
14 place, that was a year of work. It was at least  
15 three offsites and the RCMP representatives  
16 agreed that this was not a place. So for me to  
17 then see a November 2008 report from the RCMP  
18 with all this conjecture and innuendo and  
19 implication of billions of dollars is just --  
20 there's some giant disconnect somewhere. And  
21 it's been an incredible frustration for me, but  
22 I'm very grateful that this commission has  
23 allowed me to see that report after 12  
24 long years of having it in the shadows.

25 Q Thank you for that explanation, Mr. Chandler.

1 MS. HARLINGTEN: Mr. Commissioner, I recognize that  
2 the witness wasn't aware of this document, but I  
3 would ask that it be marked as an exhibit as a  
4 publicly available document in the House of Commons.

5 THE COMMISSIONER: All right. That will be marked as  
6 the next exhibit.

7 THE REGISTRAR: 436, Mr. Commissioner.

8 **EXHIBIT 436: Confronting Money Laundering and**  
9 **Terrorist Financing - Standing Committee Report**

10 MS. HARLINGTEN: Thank you, Mr. Commissioner. Madam  
11 Registrar. I won't need that document anymore.

12 Q My next question is for Ms. Paddon. Ms. Paddon,  
13 in exhibit 429, and I don't need this  
14 exhibit pulled up but that's is the RCMP Project  
15 Scot report. There is a reference at page 1 in  
16 the executive summary to what they've called  
17 "proper measures" to regulate in this area for  
18 money laundering risk specifically, and one of  
19 the solutions recommended quite briefly in that  
20 summary is the creation of a registry.

21 A (MP) Right.

22 Q I wondered if you could if you could explain  
23 from a law enforcement perspective how the  
24 creation of such a registry may be of assistance  
25 in investigating money laundering through white

1 label ATMs?

2 A (MP) The creation of a registry would be  
3 beneficial to the police because not only would  
4 it provide us with intelligence of what is going  
5 on out in the community, if there is some  
6 question of various people being involved in  
7 nefarious activity. Once we receive some of  
8 this kind of intelligence we are able to  
9 actually work with it and investigate if it  
10 looks as though it's something that would be  
11 worthy of following through with. It would  
12 uncover beneficial owners if there are  
13 beneficial owners that are hidden behind  
14 corporations where they're actually the ones  
15 that are receiving the funds or making a profit  
16 on it, you know, on those funds from the money  
17 moving through the system. It would identify  
18 overseas -- it would give us a lot more  
19 intelligence. It would identify overseas  
20 corporations, real estate assets, bank accounts.  
21 It would help with the information sharing  
22 between partners because we work a lot with CRA,  
23 FINTRAC. And those kind of partners -- and the  
24 banks for sure, and those kind of partners are  
25 what are kind of very helpful in a lot of our

1 investigations which is able to give us the  
2 opportunity to move forward in that particular  
3 investigation. So a registry is in my opinion  
4 beneficial for sure.

5 I think primarily those are the main  
6 reasons. Same with the accountability of --  
7 yeah, I would say probably more than anything  
8 those would be the main reasons. It just  
9 assists us and helps us in furthering  
10 investigations, gathering intelligence, in  
11 moving forward.

12 Q Thank you, Ms. Paddon. I'm not sure if you will  
13 be able to answer this question, but I wondered  
14 if given your extensive experience in the area  
15 of money laundering if you could comment on the  
16 frequency of convictions for money laundering  
17 more generally, not specifically with relation  
18 to white label ATMs.

19 A (MP) Honestly I really can't. I really can't  
20 comment on that. I'm sorry.

21 Q No, not at all. That's totally fine. I  
22 wondered -- my last question for you,  
23 Ms. Paddon, was the other comment in the Project  
24 Scot report is about implementation of a  
25 monitoring system. And I wondered if you had

1                   any thoughts to share with the Commissioner  
2                   about the usefulness of FINTRAC being that  
3                   monitoring system as opposed to a provincial  
4                   regulator or as opposed to no monitoring system  
5                   at all?

6           A       (MP) Well, I work extensively with FINTRAC and  
7                   they are a real asset to us. I would find  
8                   personally -- well, I shouldn't say personally,  
9                   but I would say that FINTRAC is very beneficial  
10                  in monitoring and that process of monitoring,  
11                  whether the police file or volunteering  
12                  information report, looking for specifics on a  
13                  company or, you know, a company or person in  
14                  particular. The information that we receive  
15                  back from FINTRAC helps us to establish what is  
16                  going on behind the scenes, what stage of money  
17                  laundering the corporation is at, where they're  
18                  moving their funds to. It assists us with  
19                  identifying bank accounts so that we can  
20                  continue with our investigation through  
21                  production order material and network analysis  
22                  and some of these kind of things that we would  
23                  do in a money laundering investigation. So  
24                  personally I think that the idea of a central  
25                  monitoring system being FINTRAC is the way to

1 go.

2 Q Thank you very much for answering my questions.  
3 My last question is for Mr. Morris. It picks up  
4 on a question that my friend Mr. Isaac had asked  
5 you at the end of his question about information  
6 sharing with law enforcement. And in light of  
7 your answer, I just wondered if you would agree  
8 with me that a regulatory framework as opposed  
9 to the Interac regulations would assist in the  
10 sharing of information with law enforcement on a  
11 more proactive or routine basis rather than what  
12 I'll call a reactive basis for court orders and  
13 things like that.

14 A (KM) I don't know, Ms. Harlingten, that I have a  
15 view. I think that's probably a question best  
16 directed to law enforcement. I think that  
17 Interac has tried hard to be helpful and  
18 cooperative; we've tried hard to put in the play  
19 the permissions and the measures that allow us  
20 to be supportive of law enforcement efforts when  
21 called upon, but I don't know that I can  
22 answer the thrust of your question.

23 Q That's fine, Mr. Morris. Thank you very much.  
24 MS. HARLINGTEN: Mr. Commissioner, those are all my  
25 questions for the panel. Thank you.

Melanie Paddon (for the commission)  
Kirkland Morris (for the commission)  
Christopher Chandler (for the commission)  
Exam by Ms. Harlingten  
Exam by Mr. Brongers

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1 MR. COMMISSIONER: Thank you, Ms. Harlingten.

2 Mr. Rauch-Davis for Transparency International  
3 Coalition, 25 minutes.

4 MR. RAUCH-DAVIS: Thank you, Mr. Commissioner. I  
5 have no questions for this panel. Thank you.

6 THE COMMISSIONER: Thank you, Mr. Rauch-Davis. And  
7 Mr. Brongers, re-examination of Ms. Paddon,  
8 you've been allocated 10 minutes.

9 MR. BRONGERS: Thank you, Mr. Commissioner. I have  
10 no re-examination questions, but I would ask  
11 leave of the Commissioner to ask one set of  
12 targeted questions with respect to  
13 Mr. Chandler's report that was entered into  
14 evidence right now.

15 THE COMMISSIONER: Very well.

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

17 **EXAMINATION BY MR. BRONGERS:**

18 Q Good afternoon, Mr. Chandler. To begin with can  
19 you confirm that they're hearing me clearly?

20 A (CC) Yes, I am.

21 Q Thank you. As I said my questions are about the  
22 document that was referenced during your  
23 testimony. It's title is "Actual Versus  
24 Perceived Risk of Money Laundering at White  
25 Label ATMs in Canada." I believe it was marked

1 as exhibit 432.

2 Madam Registrar, can you please bring up  
3 this document. Thank you, Madam Registrar.

4 So, Mr. Chandler, you're the co-author of  
5 this document; correct?

6 A (CC) That's correct. I authored it with Chris  
7 Mathers, who's a former CSIS agent experienced  
8 in money laundering.

9 Q And can you confirm that the document was  
10 prepared in April of 2017? I see that date on  
11 the footers there if you go down one more page.

12 A (CC) Yeah.

13 Q Thank you. If we could just go forward to  
14 page 9, Madam Registrar.

15 If we look at the first bullet there your  
16 paper says:

17 "Since 1996, there has been only one  
18 criminal case involving white label ATMs  
19 in Canada. A white label ATM  
20 operator/operator in Winnipeg was accused  
21 of loading her machines with cash from her  
22 brother's drug sales. Their activities  
23 were detected and the case is currently  
24 before the courts."

25 Did you write that, Mr. Chandler?

1           A     I did, yeah. Chris Mathers and his team had  
2                   done a sweep for me to identify what cases he  
3                   could find and this is the one that was  
4                   identified and -- yes.

5           Q     And I believe that the case you are referring to  
6                   is the prosecution of Carol Baños and Oliver  
7                   Baños [phonetic]; is that correct?

8           A     (CC) I have no idea.

9           Q     So I'm just wondering then if you followed this  
10                  case if you're aware that since you wrote your  
11                  paper that case concluded with both Mr. Baños  
12                  and Ms. Baños being convicted of laundering  
13                  proceeds of crime?

14          A     (CC) I took that from the RCMP 2020 report that  
15                  said there was one conviction in 2014. I  
16                  assumed it was the same.

17          Q     Right. And again more for the again benefit of  
18                  the commission according to the judgment of the  
19                  Manitoba Court of Queen's Bench, which again for  
20                  the commission's benefit I'll give the site.  
21                  It's R versus Baños and Baños. 2017 MBQB 114.  
22                  The Bañoses were convicted on June 28th, 2017.  
23                  Were you aware of that?

24          A     (CC) I was not aware of the date, no.

25          Q     And in fact -- sorry?

1           A     (CC) I was going to say if I may, this case kind  
2                   of supports what we've been saying, which my  
3                   understanding of this case is they started money  
4                   laundering and within six months and about  
5                   \$100,000 if that recollection is correct, they  
6                   were caught and the documentation was there to  
7                   convict them. And that has been our premise  
8                   from the beginning. This is not a smart place  
9                   to money launder because you will get caught,  
10                  likely quickly and you will certainly have a  
11                  high chance of being convicted. So this  
12                  supported that.

13           Q     And just to complete the record and basically to  
14                  update your report which indicates that the case  
15                  is currently before the courts and I'd like to  
16                  just establish the case is concluded, were you  
17                  aware that Mr. Baños and Ms. Baños appealed  
18                  their convictions to the Manitoba court of  
19                  appeal. That was reported at 2018 MBCA 86 and  
20                  that their appeals were dismissed on  
21                  September 13th, 2018? Were you aware of that?

22           A     (CC) No.

23           MR. BRONGERS: Thank you, Mr. Chandler. I have no  
24                  further questions.

25           THE COMMISSIONER: All right. Thank you,

1                   Mr. Brongers. Anything arising from that as far  
2                   as you are concerned, Ms. Harlingten?

3                   MS. HARLINGTEN: No, Mr. Commissioner. Thank you.

4                   THE COMMISSIONER: And, Mr. Isaac, anything arising?

5                   MR. ISAAC: Nothing arising, Mr. Commissioner.

6                   THE COMMISSIONER: Thank you. All right. I would  
7                   like to thank the three panelists, Mr. Chandler,  
8                   Mr. Morris and Ms. Paddon, for the time you've  
9                   taken and the help you've given the commission  
10                  in understanding an area of -- a financial area  
11                  that isn't among the usual dealt with by FINTRAC  
12                  or other regulators. I think it's been a very  
13                  interesting journey and explanation of what  
14                  occurs within the white label ATM industry. So  
15                  thank you all very much for your assistance.  
16                  You're now excused. And I think we will adjourn  
17                  until Monday morning at 9:30, Mr. Isaac.

18                  MR. ISAAC: Yes. Thank you, Mr. Commissioner.

19                  THE COMMISSIONER: Thank you.

20                  THE REGISTRAR: The hearing is adjourned until  
21                  January 18, 2021 at 9:30 a.m. Thank you.

22                  THE COMMISSIONER: Thank you.

23                               **(WITNESSES STOOD DOWN)**

24                               **(PROCEEDINGS ADJOURNED AT 2:18 P.M. TO JANUARY 18,**  
25                               **2021)**