

**Commission of Inquiry into
Money Laundering in British Columbia**

Public Hearing

Commissioner

The Honourable Justice
Austin Cullen

Held at:

Vancouver, British Columbia
via video link

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EXHIBITS

Nil

1
Robert Wainwright (for the Commission)
Examination by Ms. Mainville, Counsel for Robert
Kroeker

2 Vancouver, B.C.
3 June 16, 2020

4 THE REGISTRAR: Good morning, everyone. Thank you for
5 waiting. The hearing is now resumed. Please
6 ensure you microphones are muted unless you are
7 speaking.

8
9 ROBERT WAINWRIGHT, a witness,
10 recalled.

11
12 THE COMMISSIONER: Thank you. Yes, Mr. McCleery, I
13 understand that Ms. Mainville, on behalf of Mr.
14 Kroeker, is the next person to examine Sir
15 Robert. Is that correct?

16 MR. MCCLEERY: Yes, that's correct, Mr. Commissioner.

17 THE COMMISSIONER: Thank you. Ms. Mainville.

18 MS. MAINVILLE: Thank you very much, Commissioner.

19
20 EXAMINATION BY MS. MAINVILLE:

21
22 Q Good morning. Sir Wainwright, I just have a few
23 questions first on Europol's report called "From
24 Suspicion to Action," which is Exhibit 65. Just
25 let me know if you'd like it pulled up, but
26 they're really general questions.

27 The report states that the use of cash is
28 the primary reason triggering STRs, suspicious
29 transaction reports, and that, by contrast, only
30 one percent are from transactions via
31 correspondent banks. And so I wonder, is that
32 the result of it being more difficult to assess
33 whether funds may be proceeds of crime once they
34 are placed in a financial institution?

35 A I don't know. I don't think we know the answer
36 to that. But that's a reasonable assumption.
37 That could be part of the reason. It's more
38 likely the fact that there is a preponderant use
39 of cash because that is -- as the other reports
40 that we discussed yesterday show, that is the
41 primary instrument of payment, of course, in the
42 criminal industry. And in relation to drug
43 trafficking, of course, almost all of the
44 proceeds are generated in cash and need to be
45 deposited and converted into other assets in some
46 form. So I think it's more likely -- the reason
47 is more likely that because cash is such a

1 primary instrument in the criminal economy.

2 Q And so, when large cash transactions are made, I
3 gather reports are frequently made about these
4 cash transactions. But the ultimate aim -- and
5 this is also from this report -- the ultimate aim
6 is that reports should launch investigations and
7 complement ongoing ones and reach those tasked
8 with investigating.

9 You would agree that it's an essential part
10 of this compliance model for law enforcement and
11 financial intelligence units to follow up on STRs
12 and information provided by reporting entities
13 for AML efforts to be effective?

14 A Yes, certainly. And that is, I think, a
15 deficiency that is identified in most
16 jurisdictions, that there is poor feedback from
17 the FIUs to the obliged entities.

18 That said, even in the most efficient
19 system, not every STR necessarily needs to
20 receive the feedback, of course, so it depends
21 very much on the circumstance of the reporting
22 and the relevance it might have either to ongoing
23 investigations or indeed to the level of the
24 indication, the level of suspicions that FIUs
25 might be looking at at that time.

26 Q Certainly. And actually I was going to follow up
27 with this concept of feedback to the reporting
28 entities. The report speaks about that and how
29 the FIU and the, indeed, investigators can help
30 to improve the quality of reporting by providing
31 such feedback. And I take it this concept of
32 feedback to the private sector is important to
33 ensure that efforts are directed by the competent
34 authorities to better deploy resources and
35 deliver outcomes against criminal groups?

36 A Yes indeed. And that is the central premise of
37 the argument that I was explaining yesterday.
38 And indeed, that's important not just in terms of
39 feedback to specific reports that have been
40 submitted, but also direction coming from the
41 proactive sharing of information from law
42 enforcement through -- either directly or through
43 FIUs to the obliged entities. So I believe that
44 we need to, as you were hearing yesterday, need
45 to get a system which is much more driven by
46 better intelligence, intelligence that is
47 primarily in the hands of law enforcement

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1 authorities. Part of that driving effect, if I
2 can call it that, certainly would also be --
3 would also involve a better feedback loop and a
4 more dynamic relationship on a day-to-day basis
5 between the FIUs and obliged entities.

6 Q And just to understand exactly the nature of this
7 feedback that would be of most utility, I think
8 this ties into the idea that the report also
9 speaks to of not simply being about compliance
10 for the sake of compliance, right? And so in
11 other words, this should be outcomes-based and
12 the entities who are reporting should be able to
13 gauge the effect of their reporting and
14 whether -- and how to better improve that as
15 opposed to simply getting feedback on whether
16 they're meeting various reporting requirements.
17 Is that fair?

18 A Yes. So in that sense, a more holistic approach
19 to the problem in the sense that all of the
20 participating actors in the process of combating
21 money laundering should be, of course, as well
22 informed as possible about criminal trends,
23 methodologies, even the identity to a certain
24 extent of criminal actors. So that in each stage
25 of that process, therefore, each actor is able to
26 implement their specific responsibilities as part
27 of the overall system in a more effective way,
28 and that includes, of course, the obliged
29 entities.

30 It is true, I think, that in some cases the
31 obliged entities have a relatively low knowledge
32 of the problem that they're helping - to trying
33 to solve. And so this general idea of more
34 collaborative, more extensive information sharing
35 certainly will go some way, of course, to
36 improving the knowledge of the problem by all
37 participating parties.

38 Q And in terms of information sharing, still with
39 the private sector organizations, you spoke
40 about, in your testimony earlier, identifying
41 with more granularity suspected offenders and
42 accounts, and how there should be an increased
43 focus on specific areas and accounts. And I
44 wondered if you're aware, for instance, whether
45 the banks tend to take action or measures --
46 preventative measures -- in respect of specific
47 customers when they obtain information regarding

- 1 problematic transactions. I don't know if you
2 have a general sense of that.
- 3 A Well, yes, certainly. The regulations -- in
4 respect of the banking sector, the regulations
5 demand of the obliged entity that they conduct
6 customer due diligence checks certainly before
7 they onboard that customer for the first time and
8 on an ongoing basis continue to monitor the
9 accounts and respond to any suspicions, any
10 reasonable suspicions that the account might be
11 connected with criminal activity. Now, if the
12 source of those reasonable suspicions in some
13 cases would be coming from the police, more than
14 reasonable in that case of course, then I would
15 certainly expect the obliged entity to act on
16 that. And indeed, if they do, there is enough
17 evidence of their doing that.
- 18 Q And so for instance, when it comes to casinos and
19 the gaming industry, if they have an ability to
20 ban players from casinos, close accounts and what
21 not, there would be a benefit to that type of
22 sharing of information between law enforcement or
23 the financial intelligence unit to enable casinos
24 to do that.
- 25 A Indeed. And indeed also to identify suspected
26 criminals before they even attempted to become
27 members of a particular casino, of course.
- 28 Q Right. And so I wonder, does that tie into this
29 idea you talked about that STR monitoring and
30 reporting by nature is reactive and that you're
31 trying to find evidence of suspicions of criminal
32 activity when it's too late. I may be
33 paraphrasing what you said. But can you clarify
34 whether that's what you meant?
- 35 A It's reactive in the sense that based on rather
36 generally set control mechanisms, that -- well,
37 the facts speak for themselves in the sense that
38 the value of the STRs that are taken further
39 forward for criminal investigation are a low
40 percentage in the way that I described yesterday,
41 a maximum 10 percent in those cases. And I think
42 the reason for that is because the controls are
43 not specific enough to identify significant
44 alerts of criminal activity. And I think that's
45 the reason why STRs essentially play a rather
46 reactive role of trying to find that needle in
47 the haystack in a way that is to a certain extent

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1 randomized and ad hoc and would be greatly
2 improved if those control mechanisms were better
3 directed by better information and better
4 intelligence.

5 Q Thank you. In terms of the gaming sector being
6 vulnerable to money laundering, you've said it's
7 because they are a cash intensive business and
8 cash remains the preferred way in the criminal
9 underworld, the better method of transacting.
10 Would you agree, then, that introducing cash
11 alternatives is a positive -- in casinos is a
12 positive step towards addressing money laundering
13 in that context?

14 A To a certain extent, yes. I mean, in the sense
15 that I think cash alternatives are less
16 vulnerable in one sense to money laundering than
17 cash because there are more possibilities in that
18 case to identify the source and to verify the
19 owner.

20 That said, I described earlier in my
21 evidence the challenges that we have around, for
22 example, virtual currencies and similar that may
23 be cash alternatives in the sense that although
24 they do have a digital identity and in theory
25 could be traced, I think I said yesterday that 95
26 percent of all virtual currencies are transacted
27 through unregulated sectors, unregulated
28 jurisdictions in the world. And so for all the
29 challenges that are mainstream challenges for
30 policing combating a whole range of cyber-related
31 offences that apply in this case as well. So I
32 think there's good and bad there, so it depends
33 on how the regime might be conducted.

34 That said, generally I would expect
35 criminals to be less interested in taking any
36 option that might be available to trade in cash
37 alternatives. In the end, their overriding
38 interest in utilizing cash-based businesses for
39 money laundering purposes is in order that they
40 can bring a lot of cash through those businesses
41 in order to launder them. So I think it's also a
42 point that Peter German picked up in his report.
43 I would agree with that actually. They're
44 primarily interested in converting their
45 overwhelmingly cash-based business into a means
46 by which to launder that cash through cash-rich
47 businesses like casinos, and of course in many

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1 other areas.

2 Q And if you reduce the amount of cash in a casino,
3 would it not be fair to say that first of all,
4 the focus on the remaining cash transactions
5 is -- that is, it's easier to analyze the
6 remainder of the cash transactions if you are
7 able to move certain players off of cash
8 transactions, and in indeed, the players who
9 continue to deal with large amounts of cash, even
10 though there are other options, that may well
11 attract more suspicion?

12 A I think that's hypothetical, if you don't mind my
13 saying. We don't know that. But I am concerned
14 about the extent to which online gaming and how
15 that has grown in significant measure in recent
16 years in different jurisdictions, how that has
17 also attracted a significant degree of criminal
18 interest and criminal exploitation. So I just
19 said this is not a -- is not an easy judgment to
20 make in terms of whether or not it would be safer
21 from a criminal point of view. There are pros
22 and cons on both sides, I think.

23 Q And certainly there would need to be compliance
24 measures taken around non-cash alternatives -- or
25 cash alternatives and non-cash options. But you
26 referenced Dr. German's report. He in fact says
27 in there that focusing -- in his report on
28 casinos, that focusing on cash alternatives was a
29 failed strategy because organized criminals were
30 not looking -- are not looking for cash
31 alternatives. They want to launder cash. But I
32 take it that's not really a fair assertion given
33 your comments that cash alternatives can serve a
34 purpose in reducing the amount of cash and being
35 thought perhaps less attractive to money
36 launderers.

37 A Yes. Maybe I was slightly more nuanced too,
38 although as I said earlier, I agree with the
39 fundamental premise that the German report took
40 on that point, that in end, criminals are
41 primarily interested in cash. That said,
42 actually criminals are interested in exploiting
43 all forms of payment systems, and indeed all
44 forms of technologies. Where they can make a
45 quick buck and help their criminal activities,
46 they will do so wherever they can. So that means
47 therefore that their activities and their

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1 footprints spread far and wide also from cash
2 alternatives through to cash as well. I think
3 the balance of interest clearly is still very
4 much, however, in favour of the criminals'
5 wanting to use cash itself.

6 Q Do I take it you had an opportunity to read Peter
7 German's report?

8 A Not all 250 pages, no.

9 Q Okay. Now, in February of 2019, you talked about
10 meeting with in B.C. with the AML Secretariat in
11 the Attorney General's office to have a
12 discussion similar to the one we're having now.
13 So on that date, I take it, you had discussions
14 with the secretariat -- I'm assuming the Attorney
15 General was present.

16 A No, he wasn't.

17 Q He was not?

18 A Not in my meeting in February 2019.

19 Q Okay. And I take it on that date, though, you
20 had some discussions regarding a designated
21 police unit not being a good idea and casinos
22 being only a small part of the problem?

23 A That's correct.

24 Q And so do I understand that at that point in time
25 the focus of government was still very much on
26 casinos and you conveyed the need for the focus
27 to be much broader, given that casinos were a
28 fairly small part of the picture?

29 A I think that's a slightly simplified way. I
30 think we -- the whole point of their inviting me
31 to the meeting was for them to understand the
32 broader picture of money laundering, so that in
33 itself showed that they had to a certain extent
34 an open mind about this and indeed, seeking my
35 independent advice on their proposals. I didn't
36 -- I didn't detect a fixed idea or a fixed
37 strategy yet in the minds of those people who I
38 spoke to in the secretariat. But of course, we
39 did discuss proposals coming out of the German
40 report, particularly around policing units, DPU,
41 and I gave advice consistent with the advice I've
42 given under this evidence, that I think there is
43 a broader approach, a more integrated approach
44 that might serve the Province better.

45 We discussed how casinos are a relatively
46 small part of the overall problem in global
47 terms, although I recognized -- it's worth

- 1 repeating that again today -- that of course it
2 does very much depend on the relative -- if
3 there's a disproportionate amount of casino and
4 gaming in a particular sector, then you're likely
5 to see a disproportionately higher amount of
6 laundering through that, or course. So it does
7 very much depend on the circumstances of each
8 jurisdiction. But in general terms, if you were
9 to just take a global average, then it's a
10 relatively small part of those things.
- 11 Q Okay. And in the notes of that meeting that, I'm
12 not clear whether you thought but - because they
13 were taken by government officials. But the
14 notes indicate under the heading "Bringing Back
15 Banks Together with Police," it states: Systemic
16 failure started with the compliance culture set
17 in the regime. And it says: Mirroring the
18 banking regulatory model, you know, is not
19 necessarily the answer. And then there's another
20 bullet point that talks about there having been
21 similar concerns around casinos in Malta. And so
22 I simply wish to ask, in particular given that
23 you didn't read all of Peter German's report,
24 were you made to understand that there had been
25 issues with compliance in casinos in B.C. as the
26 premise for your work or your presentation?
- 27 A Well, I -- I wasn't and am still not today
28 familiar in significant detail in the situation
29 in B.C., and as I said, I hadn't read all of the
30 detail of the Peter German report. But of
31 course, the context -- the general context was
32 known to me, and certainly the extent to which it
33 was reported in the media, of course, during that
34 time. So I did a certain amount of research. So
35 I understood that the concern and some of the
36 criticisms that were levelled at the casino
37 interests during around that time, and that did
38 form part of my rather more general preparation
39 for my visit to B.C. at that time.
- 40 Q So I take it, based on that review and perhaps
41 other discussions, you understood that the issue
42 was fairly politically charged in B.C.?
- 43 A Oh, yes. Yes, I understood that. Yeah.
- 44 Q And am I right that -- I understand that it's
45 your view that that makes it hard to focus on
46 resources -- sorry, hard to focus resources on
47 rational and proper responses in a context like

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1 that. Is that fair?

2 A No, no, I don't agree with that. I think, if
3 anything, it creates a political opportunity to
4 enable significant reform and change. So that
5 wasn't my view then. It still isn't now. I
6 think that there is an opportunity to do
7 something truly important and even profound in
8 helping to correct any problems that the Province
9 still has in this respect.

10 Q But based on proper data and information, I would
11 assume?

12 A Yes, of course. I mean, any reform strategy in
13 any sector of course needs to be well researched,
14 of course and well driven. But my point is I
15 think that if - in my experience with Europol,
16 I've seen significant, positive, constructive
17 reform take place coming out very often out of
18 issues that start as a mini-crisis or a problem.
19 And we know that in the sense that major events
20 do shape political action. So I'm very much
21 experienced in how that worked to very positive
22 advantage across Europe, for example in the way
23 that we responded to the migration crisis in
24 Europe in 2015, the terrorist crises and the
25 attacks that followed since then. Either that
26 created a sense of political urgency to fix a
27 problem in society, and indeed significant steps
28 followed as a result. And although the
29 circumstances are different here, to some extent
30 very different, there essentially there is the
31 same opportunity to convert political interests
32 and energy into real action.

33 Q And I just wonder, just to close on that, there
34 may be a risk that resources, though, are taken
35 from certain areas and focused on areas that are
36 the subject of attention at any given point in
37 time, and I believe this contributed to the fact
38 that a police unit in B.C. that was engaged in
39 investigating financial crimes was disbanded
40 around the time when a lot of resources were
41 allocated to terrorism, which may have
42 contributed to the current situation in B.C. So
43 I take it you'd agree that there is a risk,
44 though, of that happening?

45 A Well, I don't know the detail of that example.
46 But yes, in the sense that a call for action
47 needs to be met, of course, with a viable

1 strategy that employs the most appropriate use of
2 resources. And sometimes, yes, that there are
3 negative consequences therefore for other
4 priorities. So that's always a risk. But in all
5 parts of public policy, of course, these kind of
6 difficult priorities - decisions have to be made
7 around priorities. I don't think that is in any
8 way exceptional to even everyday life in any
9 government department. These are hard calls that
10 have to be made and they rely on the right
11 judgments being taken based on being well
12 informed and the right sense of what the priority
13 of the day is.

14 MS. MAINVILLE: Thank you very much for your insight.
15 Those are my questions.

16 A Thank you.

17 THE COMMISSIONER: Thank you, Ms. Mainville. And now
18 I think we're moving to Mr. McFee on behalf of
19 James Lightbody.

20 MR. MCFEE: Yes. Thank you, Mr. Commissioner.

21
22 EXAMINATION BY MR. MCFEE:
23

24 Q Sir Robert, if I could ask you to refer again to
25 the Europol report "From Suspicion to Action,"
26 which is Exhibit 65. And in particular - and I
27 don't need it brought up unless you need it
28 brought up - but in particular, I'd like to refer
29 you to page 28 of that report. Do you have that?
30 It's the title "What happens to them?"

31 A And why don't you, while I try and find it,
32 perhaps you could continue and I'll try and bring
33 it up meantime. Thank you.

34 Q It actually should be -- my page is page 28 at
35 the top left-hand corner. It's item 9: "What
36 happens to them?" Are we on the same report,
37 "From Suspicion to Action"?

38 THE REGISTRAR: I'm sorry. Did you say page 9 or 20?

39 MR. MCFEE: No, page 28.

40 THE REGISTRAR: Oh, 28. Sorry.

41 MR. MCFEE: There we go.

42 Q So are you with me, Sir Robert?

43 A I can see that. Thank you.

44 Q Good. And the title, "What happens to them?"
45 this is a reference to what happens to these
46 suspicious transaction reports?

47 A Yes, I believe so.

- 1 Q And you'll see in the first sentence it says:
2 "Reporting entities are obliged to report
3 suspicious transactions to a central authority,
4 known as an FIU." And that's short for financial
5 intelligence unit?
- 6 A That's right.
- 7 Q And: "FIUs play an important role in receiving,
8 analysing and disseminating this information..."
9 And then the report goes on to describe FIUs
10 models and practices across the EU. And in the
11 box at the bottom you'll see the FIU types. Do
12 you have that?
- 13 A Yes, I can see it.
- 14 Q It's broken down into administrative, law
15 enforcement, judicial and hybrid. And from your
16 many years of experience in the field of AML, do
17 you have a view with respect to which of these
18 FIU models is most effective in combating money
19 laundering and terrorist financing?
- 20 A It depends on the judicial model of that country.
21 In the Anglo-Saxon model, I believe the most
22 effective model is when it's part of --
23 integrated into the law enforcement community
24 rather than, for example, a Ministry of Finance
25 or a [indiscernible] office, in my opinion.
- 26 Q But in the common law countries, as between the
27 administrative and law enforcement models, have
28 you formed any view as to which is more
29 effective?
- 30 A In my experience, I think there are -- it's not
31 such a black and white issue as you might
32 understand. On balance, in my experience, I
33 would say law enforcement.
- 34 Q And when you say on balance, what factors do you
35 take into account in coming to the conclusion
36 that on balance the law enforcement model is more
37 effective?
- 38 A Well, actually it's based really on my experience
39 at Europol of managing a process to try and
40 increase our response across Europe to fight
41 financial crime. Increasingly it involved closer
42 and closer alignment with the FIUs across --
43 across the member states. We had perhaps the
44 most productive cooperation with those that
45 happened to be more often than not coming from a
46 law enforcement domain. So in my experience,
47 that's the reason. I think that is in danger of

- 1 being quite a subjective reason in the sense that
2 it's my experience, but nonetheless it might
3 relate to the fact that Europol in itself is part
4 of the law enforcement community, so we're kind
5 of dealing with our brothers and sisters as it
6 were, who are more familiar with us. So that
7 might be a reason. So I admit that it might be
8 quite a subjective reason that I've given.
- 9 Q But you told the Commission that you're
10 advocating a more collaborative, more intensive
11 information sharing as part of the AML regime?
12 A Sorry, I missed that question.
- 13 Q You told the Commission that you advocate a more
14 collaborative and more intensive information
15 sharing component to an effective AML regime.
16 A Yes, I agree. Yes, I did say that.
- 17 Q And is it your view that the law enforcement
18 model of FIU facilitates greater information
19 sharing between the FIU, the law enforcement
20 agencies and the reporting entity?
21 A Yes, certainly. FIUs if its sited, of course, in
22 the law enforcement domain are therefore within
23 easier reach in many ways to the wider law
24 enforcement community. And typically, if the
25 primary purpose of a suspicious transaction
26 report is to assist in the investigation and
27 successful prosecution of financial crime, then
28 in the common law system, that's an investigation
29 that would be initiated within the law
30 enforcement environment. So if the FIU therefore
31 is integrated as part of that environment, then
32 it's likely to have a more seamless opportunity
33 to share that information and its [indiscernible]
34 investigation as it developed.
- 35 Q And I take it Canada's FIU, FINTRAC, would fall
36 within the definition -- the scope of an
37 administrative FIU?
38 A I guess so. Although I'm not -- you know, I'm
39 not familiar in detail with FINTRAC. But I
40 suppose that is the closest definition that would
41 apply.
- 42 Q Now, in the context of this same report, you
43 described for the Commission some metrics to
44 assist policymakers, law enforcement and the
45 public in evaluating the effectiveness or
46 otherwise of the AML regime. But starting at a
47 base level, would you agree that the gathering

- 1 and submission of these suspicious transaction
2 reports are a cornerstone of the current AML
3 regime?
- 4 A Yes, that's true.
- 5 Q And during the time period of this study, 2006 to
6 2014, when we look at the study, the number of
7 STRs being filed with the European FIUs were
8 increasing steadily?
- 9 A Yes, that's a reasonable statement, yeah.
- 10 Q And in fact if I could take you back to page 9 of
11 the report, please -- the title is "How many
12 reports are sent?" And you see in that graphic
13 there, with the exception of 2008, which is an
14 anomaly, there seems to be a pretty steady
15 increase in the number of STRs being filed?
- 16 A Yes.
- 17 Q And yet despite the steady increase in the number
18 of STRs filed, as you've testified, consistently
19 throughout this timeframe, 2006 to 2014, only 10
20 percent of the STRs were further investigated.
21 Is that accurate?
- 22 A That's -- on average, 10 percent, yes. There are
23 of course variations between countries and indeed
24 between years. But typically it's an average
25 rate of 10 percent.
- 26 Q So the volume of STRs, the number of STRs being
27 filed didn't seem to over the years impact on
28 that 10 percent figure? Is that accurate?
- 29 A It didn't seem to, no.
- 30 Q You advised the Commission that in 2008 in the
31 United Kingdom, banks expended approximately
32 5 billion pounds to operate and comply with the
33 AML requirements? Did I understand that evidence
34 correctly?
- 35 A That was 2018, not 2008.
- 36 Q Okay, 2018, yes. Thank you. So is that, did I
37 understand that evidence correctly there?
- 38 A Yes. The reporting is that approximately
39 5 billion pounds were spent indeed by the banking
40 sector to comply - to run their compliance teams
41 and the process by which they would report
42 suspicious transaction reports.
- 43 Q And so just so we understand it, is that just by
44 the banking sector? It doesn't include the other
45 sectors of the economy that are required to
46 report to the -
- 47 A No, I believe that figure applies just to the

1 banking sector.

2 Q And has there been any quantification of the
3 other sectors of the economy beyond banks that
4 are required to report?

5 A Not that I'm aware of in the United Kingdom in
6 2018. The report that I'm familiar with only
7 refers to the banking sector.

8 Q And the 10 percent figure that you gave the
9 Commission, as I understand it, that's referred
10 to in the report as the conversion rate? Did I
11 understand that correctly?

12 A That's right, yes.

13 Q To your knowledge, has a similar evaluation of
14 the effectiveness or otherwise of the Canadian
15 AML system been undertaken?

16 A Not to my knowledge. I simply don't know yes or
17 no.

18 Q But as an expert in AML systems and money
19 laundering, in your view would it be useful to
20 Canadian policymakers, law enforcement and this
21 Commission to have similar evaluations
22 undertaken?

23 A Yes, certainly, by my experience of how useful it
24 was to do that in Europe.

25 Q Changing topics a little bit, in your testimony,
26 you testified that one of the shortcomings in the
27 existing AML regimes is that it relies on
28 reporting entities to file STRs in a reactive
29 state and very often too late. Did I understand
30 you correctly?

31 A That's right, yes. Yes.

32 Q And you stated that in your view AML regimes need
33 to move to a more proactive model, correct?

34 A Yup, that's right.

35 Q Part of the proactivity would be identifying and
36 reporting potentially suspicious transactions at
37 an earlier state?

38 A Well, no. I think that primarily what I mean by
39 that is that it would depend on the ability
40 through an information sharing, collection and
41 analytical model that combined the information
42 from multiple sources, including from obliged
43 entities and the police. That in itself would
44 identify at an earlier stage of a suspected
45 criminal conspiracy, the nature of that
46 conspiracy and who might be involved, which there
47 would allow, therefore, for obliged entities to

1 take action and report on that action, therefore,
2 in an earlier part of the process of suspected
3 criminal activity.

4 Q Fair enough. So I take it that one component of
5 a more proactive model is information sharing
6 across economic sectors and also, to the degree
7 possible, across borders?

8 A Yes. And to the degree possible, also involving
9 the law enforcement sector, of course. And the
10 caveat that you used, to the degree possible, is
11 of course a critical component here because the
12 regulatory model permitting that doesn't exist in
13 many forms and, in many respects, many
14 jurisdictions.

15 Q Just so I understand it, then, a key element of
16 this proactive model would then be quite broad
17 information sharing between the private sector,
18 non-financial designated reporting entities, and
19 financial institutions, law enforcement, and the
20 FIU?

21 A I think having the whole system, all of those
22 actors, on a single centralized system indeed
23 would deliver, I think, tremendous benefits. The
24 challenge in getting to that point and to
25 overcome significant regulatory concerns,
26 practical concerns, technology concerns, might
27 make that ambition effectively unworkable, at
28 least in the short to medium term. But any moves
29 in that direction towards at least a subset of
30 that ideal community, towards some kind of
31 sharing, would deliver fewer benefits but still,
32 in my belief, significant ones.

33 So in so far as there are optimum
34 arrangements available to do something rather
35 quickly, without significant changes to
36 regulation, for example, then one should do that
37 and start this journey rather than just waiting
38 for a state of nirvana, which would be all of the
39 actors that you might ideally place on that list.

40 Q Fair enough. But in that context, in your
41 interaction with the Province of British Columbia
42 officials, did you learn that the B.C. Lottery
43 Corporation established an information-sharing
44 agreement with the RCMP?

45 A I knew of the existence of that but not the
46 detail of it, and I don't recall any significant
47 discussions around that.

- 1 Q Well, in that context, did you learn that BCLC
2 was the first gaming company in Canada to
3 establish such an information-sharing agreement?
- 4 A I didn't know that.
- 5 Q But given your broad experience in AML, would you
6 view it as a positive step to implement -- to
7 have an information-sharing agreement between the
8 casino operator who's a reporting entity and the
9 law enforcement entity, the RCMP?
- 10 A Yes, of course. I'd be interested in hearing of
11 course then how effective the implementation of
12 that was. But certainly the concept of it, yes,
13 I would support.
- 14 Q In any of your interaction with the British
15 Columbia officials, were you aware that in 2017
16 the Province established a Joint Illegal Gaming
17 Investigation Team under the acronym JIGIT?
- 18 A Again, I was aware of it but no significant
19 detail or discussion was held involving me.
- 20 Q Well, were you at least made aware that JIGIT was
21 comprised of RCMP members, members of the
22 municipal police forces where the gaming casinos
23 were located, and the regulator?
- 24 A No, I wasn't. And I think if you look at the
25 notes of my meeting, I think there's no -- little
26 or no reference to that, which indicates that it
27 wasn't a substantial part of our discussion.
- 28 Q Well, in terms of information sharing, was there
29 any discussion or did you learn that JIGIT meets
30 on a weekly basis with the B.C. Lottery
31 Corporation AML unit representatives to discuss
32 unusual and suspicious transactions?
- 33 A I don't recall that.
- 34 Q But given your broad experience in the field of
35 AML, would you view that as a positive step to
36 have an integrated law enforcement unit meeting
37 on a weekly basis with the casino operator?
- 38 A Yes.
- 39 Q Now, earlier the Commission heard some evidence
40 respecting the establishment in the United
41 Kingdom, in your home jurisdiction, of the Joint
42 Money Laundering Intelligence Task Force, that --
- 43 A That's right.
- 44 Q [overlapping speaking]
- 45 A That's right.
- 46 Q And this Joint Money Laundering Intelligence Task
47 Force, as I understand it, brings together law

1 enforcement, the regulator, and over 30 financial
2 institutions to exchange and analyze information
3 and intelligence. Is that accurate?

4 A Yes, it is.

5 Q And in your view, has this -- how's the acronym
6 pronounced? Is it JIMLIT?

7 A Exactly, yeah.

8 Q In your view, has JIMLIT brought a positive
9 contribution to the fight against money
10 laundering in the UK and Europe?

11 A Yes, it has, certainly in the UK.

12 Q And in your view as an expert in the field of AML,
13 what can Canadian policymakers learn from the UK
14 experience with JIMLIT in terms of implementing a
15 similar system here, and what should be
16 encouraged, and possibly what might be avoided?

17 A There are significant potential benefits
18 available by making closer the information
19 sharing cooperation agreements between law
20 enforcement and the regulated sector,
21 particularly when it's done at a reasonably large
22 scale, in this case involving 40 entities from
23 the financial sector in the United Kingdom, and
24 particularly when it involves a proactive sharing
25 of, albeit sensitive investigation relating to
26 ongoing criminal investigations, a regulatory
27 model allowing that to happen was found in the UK
28 to make this happen, initially on a trial period,
29 I think from 2015. Within two years the results
30 of that were very clear in terms of the benefits
31 that was bringing and driving a much more
32 effective way of identifying criminal actions.
33 And although every jurisdiction is different, of
34 course, and so a copy/paste model of JIMLIT
35 dropped into Canada won't necessarily fly, and
36 the principles of an approach like that, as I
37 said I think earlier in my testimony, have since
38 been accepted in most parts of the world as an
39 exemplar of best practice.

40 MR. MCFEE: You've been very helpful. Thank you very
41 much. Those are my questions.

42 A Thank you.

43 THE COMMISSIONER: Thank you, Mr. McFee. I now think
44 that Ms. Tweedie on behalf of the British
45 Columbia Civil Liberties Association is next.

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

1 EXAMINATION BY MS. TWEEDIE:
2

3 Q Sir Robert, counsel for the participants in this
4 inquiry were provided with certain documents in
5 advance of your testimony, and one of those
6 documents, which Ms. Mainville referred to
7 earlier, has the heading "Wainwright - February
8 7, 2019."

9 MS. TWEEDIE: And I'm wondering, Madam Registrar, if
10 we would be able to display that for a moment.
11 Thank you.

12 Q Sir Robert, do you recognize this document as
13 your notes from your meeting with the B.C. Anti-
14 Money Laundering Secretariat on February 7th,
15 2019?

16 A No, they're not my notes. They're notes by B.C.
17 government of a meeting involving me.

18 Q Okay. And you were present at that meeting?

19 A Yes.

20 Q And near the bottom of this document, we see a
21 heading that states: "DPU it's the wrong thing
22 to do." And underneath that, bullet point
23 stating that the trend is to move away from
24 dedicated units, and you gave some evidence about
25 this yesterday. To confirm, as these notes
26 indicate, you believe that investing in a DPU is
27 not the right way to go about tackling money
28 laundering?

29 A I believe that that on its own is not the right
30 way to do it, and to do it in isolation of other
31 measures is not the right way to do it. I think
32 the move itself in order to -- is likely to
33 increase the level of effective law enforcement
34 cooperation with that sector, but my premise of
35 my evidence is that it needs to be part of an
36 integrated solution and not something that stands
37 alone in its own silo.

38 Q I see. And would you agree that B.C. deciding to
39 invest fifteen to twenty million dollars annually
40 in a designated policing unit would be a bad idea
41 at this point?

42 A I don't want to comment on that, and I wasn't
43 aware of that detail.

44 Q Okay. Thank you.

45 MS. TWEEDIE: You can take that document down. Thank
46 you, Madam Registrar.

47 Q And next I would like to turn to another document

1 which are notes from another meeting that you had
2 in March with the heading "March 13."

3 MS. TWEEDIE: Madam Registrar, I wonder if you could
4 bring that document up for a moment.

5 Q And Sir Wainwright, to confirm, I know you didn't
6 take these notes yourself. But do you recognize
7 these as minutes from a meeting that you had with
8 Peter Dent and Jamie Ross?

9 A Yes.

10 Q Thank you. And on page 2 of these notes, there's
11 a bullet point under your initials which states
12 that: Many privacy legislations allow for
13 attributed exemptions to ensure the safety of the
14 state. And I'm hoping you might be able to
15 please speak to what you meant by that.

16 A Well, in a sense I think I also have talked about
17 this during my evidence in the sense that in my
18 experience in Europe, privacy legislation, for
19 example that which governs the use of -- governs
20 the way in which police law enforcement sector
21 might collect and use personal data. But our
22 privacy legislation governing the police's use of
23 that personal data absolutely nonetheless allows,
24 of course, for that data to be used in order to
25 protect the safety of the state. I can't
26 remember if I said the state, but certainly the
27 safety of the general public. So more
28 specifically let me explain that. I think that
29 it's a principle perhaps -- I'm sure you're aware
30 it's a principle of good governance and data
31 privacy/data protection terms that the consent of
32 the data owner should normally be sought before
33 data relating to him or her is processed.

34 In the field of law enforcement, it's
35 generally not a good idea to seek the consent of
36 the data subject, given that the data subject
37 might be a suspected terrorist or a serious
38 criminal, and the police would not want to alert
39 that individual to the fact that they may be
40 investigating him or her. Data privacy
41 legislation effectively provides an exemption
42 therefore from the general principle that you
43 should not process data without that person's
44 consent. So that's an example, I think, that I
45 might have used in that discussion. There are
46 others as well.

47 Q I see. Thank you. I'd like to turn to the topic

1 briefly of beneficial ownership registries. And
2 I suppose we're talking about a different type of
3 exemption in this case. I'd like to ask you
4 about individuals requesting exemptions from
5 beneficial ownership registries perhaps because
6 of a risk of violence or intimidation or fraud.
7 And I recognize that this might not be a
8 particular area of expertise, but I'm wondering
9 if you might be able to speak to your knowledge
10 of when such exemptions are granted, for
11 instance, in the UK.

12 A I simply don't know that, Ms. Tweedie. I'm
13 sorry. It's not an area that I feel comfortable
14 talking about because I don't have enough
15 knowledge.

16 Q Okay, thank you. So I'm hoping to just turn to
17 one more report.

18 MS. TWEEDIE: Madam Registrar, you can take down that
19 document. And I don't need this next report
20 displayed, but it is the report we referred to
21 yesterday, "Why Is Cash Still King?" and I
22 believe that's marked as Exhibit 64.

23 Q And this is the Europol report, from when you
24 were the head of Europol. And at page 41 of that
25 report it states:

26
27 Technology poses threats not only in terms
28 of the expanding predicate crimes which
29 generate criminal profits, but also through
30 offering new channels for money
31 laundering.... However, technology is
32 simultaneously a tool which could be
33 exploited by Law Enforcement in their money
34 laundering investigations.

35
36 I take this to mean that the report is saying
37 that there is certainly a risk of abuse of
38 technology by law enforcement, and I'm wondering
39 if you might be able to elaborate on that.

40 A Sorry. Can you repeat the last part. You take
41 it to mean that it's what? Excuse me?

42 Q That there is a potential for law enforcement to
43 abuse technology.

44 A No, that's not the meaning of the report. When I
45 heard you reading it again, it occurred to me
46 that we -- that the report could have been more
47 clearly written at the time and -- because we

1 rather injudiciously used the word "exploited."
2 We didn't mean that. In the sense -- it is
3 rather a more fundamental point that technology
4 is both a friend and a foe to law enforcement.
5 It's certainly an aid to criminal activity. But
6 through the process of artificial intelligence,
7 data analytics, digital identity, it is also a
8 great friend potentially in aiding the cause of
9 law enforcement investigations. That was the
10 sense of that statement in the report.

11 MS. TWEEDIE: Okay, thank you. That was helpful.
12 Those are my questions.

13 A Thank you.

14 MR. MCCLEERY: Mr. Commissioner, I apologize for the
15 interruption. I wonder if this might be an
16 appropriate time for a break.

17 THE COMMISSIONER: Yes, all right, Mr. McCleery.
18 We'll take 15 minutes. Thank you.

19
20
21

(WITNESS STOOD DOWN)

22 THE REGISTRAR: The hearing is adjourned for a 15-
23 minute recess until 10:38 a.m. Please mute your
24 mic and turn off your video. Thank you.

25
26
27

(PROCEEDINGS ADJOURNED)
(PROCEEDINGS RECONVENED)

28
29
30

THE REGISTRAR: Thank you for waiting. The hearing is
now resumed.

31 THE COMMISSIONER: Thank you, Madam Registrar. Next
32 is Mr. Comeau on behalf of Transparency
33 International Coalition. Yes, Mr. Comeau.

34 MR. COMEAU: Thank you very much.

35
36
37

EXAMINATION BY MR. COMEAU:

38 Q Sir Robert, good afternoon.

39 A Good afternoon.

40 Q Would you please share your views on the threat
41 of money laundering in Canada by criminals from
42 authoritarian and corrupt regimes?

43 A I don't have a detailed view of that.

44 Q Then can you speak more generally about money
45 laundering not so much into Canada but just money
46 laundering into western liberal democracies,
47 including EU, your experience there, from

1 criminals from authoritarian and corrupt regimes?
2 A Yes. It's part of the -- in my experience, it's
3 part of the criminal threats that are faced by,
4 as you say, western democracies within Europe but
5 included there for the processing of large
6 quantities of -- large proceeds of crime
7 connected, for example, with serious criminal
8 activities in, for example, the Russian-speaking
9 part of the world and possibly other
10 jurisdictions as well. And that there is,
11 therefore, some evidence, some history of monies
12 from those criminal organizations -- and indeed
13 all others, not just those from that part of the
14 world -- being sought to enter the financial
15 system of Europe and indeed other western liberal
16 democracies.

17 Q Thank you. I was wondering if you could share
18 your views of particular incentives that
19 criminals from authoritarian and corrupt regimes
20 would have to launder money in western liberal
21 democracies above and beyond just the normal
22 ones. And just to put it in context, I'm just
23 going to give you a brief quote from CIA director
24 General David Petraeus and U.S. senator Sheldon
25 Whitehouse. They jointly stated:

26
27 In contrast to the Cold War, when the Soviet
28 bloc was sealed off from the global
29 economy..., today's autocrats and their
30 cronies cynically seek to spend and shelter
31 their spoils in democratic nations, where
32 they want to shop, buy real estate, get
33 health care and send their children to
34 school.

35
36 Ironically, one of the reasons 21st-
37 century kleptocrats are so fixated on
38 transferring their wealth to the United
39 States and similar countries is because of
40 the protections afforded by the rule of law.
41 Having accumulated their fortunes illegally,
42 they are cognizant that someone more
43 connected to power could come along and rob
44 them too, as long as their loot is stuck at
45 home.

46
47 Sir Robert, would you provide the Commission with

- 1 your views that the threat of criminals from
2 authoritarian regimes laundering their dirty
3 money because of those factors?
- 4 A Well, those are certainly distinguished observers
5 that are making those statements, and I think
6 there is sense to that statement. I'm more
7 directly experienced, however, in seeing the
8 extent to which criminals from outside Europe,
9 from a range of different countries, have sought
10 to acquire significant assets in Europe,
11 primarily -- I think primarily to the extent that
12 those assets are quite attractive -- properties,
13 businesses -- but the reason advanced by General
14 Petraeus and others that therefore they also are
15 encouraged and motivated by the fact that they
16 want to be protected by the rule of law is a
17 perfectly reasonable assumption to make as well.
- 18 Q Thank you for that. And may I direct you, Sir
19 Robert, to the statement found at the bottom of
20 page 26 of Europol's report, "From Suspicion to
21 Action."
- 22 MR. COMEAU: May we please have page 26 put on the
23 screen, please?
- 24 Q And right at the bottom is a statement, and it
25 states:
- 26
27 It is probable that launderers select
28 markets opportunistically, placing funds in
29 countries perceived to be more lightly
30 controlled, and integrating profits in
31 stable and appealing economies.
- 32
33 Do you see that, Sir Robert?
- 34 A Yes.
- 35 Q So as you may be aware, at present none of the
36 provinces in Canada requires disclosure of
37 beneficial ownership of companies or real estate.
38 Given Canada's strong rule of law but weak anti-
39 money laundering laws, particularly pertaining to
40 disclosure of beneficial ownership, does that
41 make Canada doubly attractive target for
42 criminals from authoritarian and corrupt regimes
43 to launder their money in Canada, including
44 investing in real estate in our largest cities
45 like Vancouver?
- 46 A Well, it certainly does represent a challenge, I
47 think, in our need to run the most efficient

1 anti-money laundering system. It's a challenge,
2 of course, found not only in Canada. But it's
3 generally well accepted that real estate,
4 especially expensive real estate, are among the
5 favoured assets and targeted, as you say, in an
6 opportunistic way by criminals.

7 And it's always struck me as an anomaly in
8 the system of fighting financial crime that,
9 whereas in the case of the banking sector, their
10 customer due diligence requirement is rather
11 robust, the requirement falling on each bank to
12 follow the so-called know your customer
13 principles are also very robust and are monitored
14 and measured by regulators in quite a diligent
15 way. But in at least some jurisdictions and in
16 some cases, it's not always necessary to
17 establish and prove your ownership when buying
18 property, of course. So on the one hand, it
19 seems to be much more difficult in certain
20 jurisdictions to open a bank account than it is
21 to purchase an expensive property. And that, to
22 me, in general terms at least, is an anomaly in
23 the system.

24 Q Thank you.

25 MR. COMEAU: And you can take down that report. Thank
26 you very much. I won't need it any more.

27 Q So, Sir Robert, when dealing with money
28 laundering in Canada, in your opinion, would it
29 be a significant mistake to focus principally on
30 predicate crimes committed within Canada?

31 A Well, I must take care, Mr. Comeau. I'm not an
32 expert on money laundering in Canada. I bring my
33 experience from other jurisdictions in Europe. I
34 think -- so I can speak just on that and what
35 I've learned from that, that I think would
36 therefore stand as global norms of good practice.
37 And to that end, I think I would agree with your
38 statement. That's a reasonable statement to make
39 in general terms.

40 Q Sure. Thank you very much for that. I'm now
41 going to shift over to the UK. So, Sir Robert,
42 my understanding is that the UK register of
43 persons with significant control was the world's
44 first publicly accessible registry of beneficial
45 ownership of companies. Is it fair to say that,
46 as ground-breaking as it was, there were lessons
47 to be learned?

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Transparency International Coalition

- 1 A I'm sure there were, but again, this is not an
2 area of my expertise, so it's not something that
3 I can comfortably talk about.
- 4 Q Okay. Then I'll just go in more a general thing,
5 not specific just to that registry. So is it
6 your view that identification data submitted on a
7 registry of beneficial ownership is much more of
8 value, has higher integrity, if it is vetted?
- 9 A If it is what? Excuse me?
- 10 Q If it is vetted. Vetted by -
- 11 A If it's vetted. Well, I think it's - of course
12 it has more value. In managing any compliance
13 process or indeed supporting an investigative
14 requirement that police authorities might have,
15 it will be of more value if the information
16 therein could be verified, of course. And so
17 verifying the owner's identity, of course, is an
18 essential part of that.
- 19 So I'm not sure what you mean by vetted
20 beyond that.
- 21 Q I'm talking about vetting - basically vetting the
22 identification of the person who claims to be the
23 beneficial owner. It would be such things
24 typical vetting that you would have, say, by any
25 reporting entity required generally in Canada by
26 FINTRAC, but just generally by FATF, things like,
27 you know, you would want to see a copy of the - a
28 government-issued photo identification or if you
29 have digital identification - that type of thing
30 -
- 31 A Oh.
- 32 Q -- to be filed with - on the registry so that the
33 government could be looking at it, vetting it,
34 i.e. does that match the information that the
35 filer is providing?
- 36 A Yes indeed, and it's a mainstay of how the
37 compliance regime, for example, runs in the
38 banking sector. As I said, the process of
39 customer due diligence would expect reasonable
40 efforts made by the bank in that question to
41 verify the accuracy, integrity, the reliability
42 of the supporting evidence confirming the
43 identity of the applicant before a new account,
44 for example, could be opened.
- 45 Q Thank you for that. And are you aware of the
46 requirement under the European Commission's fifth
47 AML directive for EU member states to implement a

1 publicly available beneficial ownership registry
2 for companies, trusts and other legal
3 arrangements? Generally are you aware of that?
4 A Generally I'm aware, yes.
5 Q Are you aware whether the fifth directive
6 requires vetting of identification -- vetting and
7 verification of identification information on
8 those registries?
9 A I'm not aware of that. I assume that it is,
10 though, in my experience. But I'm not aware of
11 that.
12 Q Fair enough. And going back to the UK beneficial
13 ownership registry of persons of significant
14 control, have you heard any rumblings or anything
15 to the effect that they want to start
16 implementing verification and vetting of
17 identification information on that registry?
18 A I haven't heard anything of that sort.
19 Q Thank you. And user fees generally -- the UK
20 registry had them and then did away with them,
21 and searches went sky high after that. I could
22 give you stats but let's not bother. Let's just
23 assume they were increased to a very large
24 extent. In your view generally, from an AML
25 perspective, is particularly freer flow of AML
26 information and the removal of user fees helpful?
27 A Well, I certainly agree with the first part of
28 that question, Mr. Comeau, in the sense that,
29 yes, the freer flow of AML information, yes,
30 certainly would be. And indeed, if there was
31 evidence that user fees suppressed that flow,
32 then that would be a challenge, yes.
33 Q Yeah. There was but that's my evidence.
34 A Okay.
35 Q We won't go into it.
36 A Sure.
37 Q And digital ID. Would you please share your
38 views of the potential for digital ID in
39 combating money laundering, and particularly in a
40 government vetting identification information
41 perhaps, but say on a registry et cetera.
42 A Yes. It has a lot of potential if it can be made
43 to work, and there is a challenge in that. But
44 I'm seeing some encouraging progress in some
45 jurisdictions, including the United Kingdom. It
46 has the potential, of course, because it's
47 through the use -- for example, innovative use of

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Transparency International Coalition

1 biometrics. One could reach a standard of
2 verification that is of a higher -- a higher
3 standard, and so you might get a more reliable
4 indicator of the person's identity. And indeed,
5 it's also likely to lead, if it were to
6 introduced in the mainstream, to much greater
7 efficiency in the system because it becomes a
8 single verifiable identity that then can be used
9 in a portable way for multiple paths of someone's
10 engagement in the economy, for example.

11 So I think it does have significant
12 potential. I'm also quite attracted to the idea
13 that that information would be owned by the
14 individual, of course, and not left registered as
15 current paper copies are, for example, in
16 multiple different institutions that the
17 individual is seeking to bank with or open other
18 kind of financial dealings. So in that sense it
19 also becomes a better way of safeguarding
20 someone's data privacy rights, for example.

21 Q Thank you. Sir Robert, I want to shift to the
22 topic of asset recovery, which you -- is one of
23 the topics in the Europol "Does crime still pay?"
24 But I want to tie it into how governments might
25 rethink cost-benefit analysis from their various
26 AML systems. So I see from your resumé and from
27 your testimony that you have many years helping
28 companies and governments establish systems to
29 better combat money laundering. Am I correct in
30 assuming one of the major constraints is the
31 limitation of financial resources? What's it
32 going to cost? How much bang I can get for my
33 AML buck? Is that your experience?

34 A It is a factor. It's a factor that especially
35 applies in public authorities, in law
36 enforcement, less so in some of the obliged
37 sectors because of the amount of investment that,
38 for example, banks are now conducting. But
39 certainly in law enforcement it's a significant
40 restriction, yes.

41 Q So I wonder if you could share your views on
42 something I've just come to realize myself in the
43 last few weeks. The net cost for a government to
44 build and operate a proper registry for
45 companies, beneficial ownership registry for
46 companies, particularly like -- you know, a
47 really good one with full vetting information et

1 cetera, that's very expensive. That's pretty
2 much common knowledge. But building and
3 maintaining a proper beneficial ownership
4 registry for land, dollar for dollar, is highly
5 lucrative. And the better the AML functionality
6 of the registry, the more money the government
7 makes.

8 And just -- if you'll bear with me for a
9 minute, just one more statement, just to give you
10 an example of what I'm talking about. If you
11 discover a falsely declared registrant on a
12 beneficial ownership registry for companies, your
13 laws may state -- a particular country's laws may
14 state that you can fine that guy hundreds of
15 thousands of dollars, even millions of dollars.
16 But good luck collecting on those fines if he
17 lives in China, Russia, or more than a hundred
18 other countries.

19 But a beneficial ownership registry for land
20 is completely different because you can always
21 freeze, seize and confiscate the land, an
22 immovable asset. In other words, the government
23 is much like a secured creditor. Does that
24 analysis make sense to you, that there really is
25 a different investment model there by the
26 government that might encourage them to spend a
27 lot of money on their beneficial ownership
28 registry for land because it might be self-
29 funding or even better than that?

30 A It sounds as if you've done more thinking and
31 research in this than I have, Mr. Comeau. So I
32 don't know enough about the mechanisms or, for
33 example, beneficial ownerships around land
34 registry for me to comment on that. I'm sorry.

35 Q Fair enough. Okay. Thank you. Now, you've
36 spoken about the need to focus on technology and
37 information sharing in combating money
38 laundering. As presently constructed, publicly
39 accessible beneficial ownership registries around
40 the world are generally a one-way flow of
41 information. They send beneficial ownership
42 information out into the world. Here in Canada,
43 Transparency International has recommended that a
44 confidential tip line like Crime Stoppers be
45 built into the registry so that searchers from
46 around the world can confidentially send Canadian
47 law enforcement agencies facts and evidence

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Transparency International Coalition

1 connecting a falsely declared frontman or the
2 beneficial owner to the perpetrator of a
3 predicate crime.

4 In your view, would that two-way flow of
5 information have the potential to increase
6 Canada's or any other country's ability to combat
7 money laundering?

8 A Yes. And I have no detail about that, no
9 personal experience. But yes, in my view, in
10 general terms that it would have that potential.
11 Of course, it depends how it was constructed and
12 implemented. But yes, it would have that
13 potential at least.

14 Q And I agree with you. It depends how it's
15 constructed because it would -- if you don't have
16 vetting of the beneficial ownership information
17 to begin with, then it's very hard to make
18 connections and then to make -- how do they give
19 you information, et cetera. So it's -- would you
20 agree the stronger that you have the registry
21 built to enforce -- send information out --
22 meaningful information out to the world, the
23 better the chance of persons out in the world
24 using it to send you back meaningful information
25 back?

26 A Well, that's quite a wide topic in the sense that
27 sending information out to the world, of course
28 it depends where and what information it is, and
29 there are many other -- as you would know, of
30 course, there are many privacy and other
31 dimensions to consider in constructing a model
32 like that. So I'm not sure about that statement.

33 Q Fair enough. On page 37 of "From Suspicion to
34 Action" you discuss the significant benefits of
35 unique identifiers in distributed ledger
36 technology. Do you believe that it'd be helpful
37 in combating money laundering if unique
38 identifiers were used for beneficial owners on
39 public registries as well? And if so, would
40 that be helpful?

41 A It would have the potential to do so, again
42 depending on how it was constructed, of course,
43 yes.

44 Q Fine. Would it be helpful, in your view, to
45 expand and coordinate the universality of unique
46 identifiers so that one beneficial owner is
47 assigned a unique identifier. He would remain

- 1 and be required to use that identifier for all
2 future transactions, regardless whether a
3 financial institution is processing that
4 transaction. In other words, a global unique
5 identifier. Is it worth the EU and other
6 countries working towards that system?
- 7 A I mean, this is, again, not an area of my
8 expertise. But of course, in the way that you
9 describe that, it would have a clear potential.
10 The challenge of getting to that point certainly,
11 in constructing a system where you could apply on
12 a global basis a single identifier, is enormous,
13 and I'm not sure how that could be achieved. It
14 might be possible within a more integrated
15 political and economic region like the European
16 Union, of course. But even then, I would think
17 that would be quite a task. But yes, of course,
18 in theory it would deliver certain benefits.
- 19 Q Thank you. I want to shift to declarations of
20 beneficial ownership. In your testimony and
21 submitted documents, you indicated one of the
22 biggest obstacles in prosecuting money laundering
23 is the need to connect the laundered money to the
24 predicate crime before you can even say that
25 there's money laundering. Is that correct?
- 26 A Yes. Different jurisdictions apply different --
27 different legal standards here in the sense that
28 certain countries don't require evidence of
29 predicate offence for money laundering still to
30 be judged a criminal offence. But many others
31 you do need that evidence, so you need to connect
32 therefore the suspected money laundering action
33 with some evidence of it being from the proceeds
34 of a predicate offence, which is why cash is such
35 a problem in the money laundering chain.
- 36 Q And tracing that money down the money laundering
37 rabbit hole, shell companies, trusts in multiple
38 jurisdictions --
- 39 A Sure.
- 40 Q -- that's time consuming and expensive.
- 41 A Sure.
- 42 Q All right. I was wondering if you could speak to
43 the use of declarations of beneficial ownership
44 with meaningful sanctions attached, such as
45 prison sentences, as an easier way to prosecute
46 the frontman, the guy who's falsely, you know,
47 claiming he is the beneficial owner, and to use

1 that threat of prosecution to flip the frontman
2 and disclosing the true beneficial owner, the
3 perpetrator of the predicate crime. Do you
4 see -- have you used those and do you see utility
5 in using declarations of beneficial ownership in
6 that way?

7 A Well, I haven't seen and I have no personal
8 experience of that being used as an investigative
9 strategy. But there are -- I guess it might work
10 in terms of, as you say, flipping the frontman.
11 But the idea of the challenge, of course, of
12 doing that is part and parcel of a typical
13 criminal investigation and it's not always
14 possible to do that because of the complex web
15 sometimes of certain offshore locations that are
16 used, and so the identity isn't always so easy to
17 even identify a frontman who is sufficiently
18 close to the top guy for him to even have the
19 information available, were he could be flipped.

20 Q Fair enough. But at least we can get him for --
21 it's much easier to prove that he's made a false
22 declaration. And so that being the case, there's
23 at least a deterrent value?

24 A Indeed. I mean, how big it is, I don't know. It
25 depends. But what you're describing, I think, is
26 one part of the anti-money laundering framework
27 that could at least contribute to a more
28 successful outcome. I'd agree with that, yeah.

29 Q Now, I know you're not an expert in Canadian law.
30 So let's just assume that Canada -- in Canada
31 there's not a specific law against a bank
32 customer lying about its beneficial ownership
33 when opening up a bank account. Same thing for
34 new clients of lawyers, accountants and other
35 reporting entities. There's nothing specifically
36 -- no specific law that says it is a crime if you
37 misrepresent your beneficial ownership when you
38 give -- disclose that to a reporting entity. In
39 your view, would it be helpful in combating money
40 laundering if it were to be made a criminal
41 offence to falsely declare beneficial ownership
42 or disclose beneficial ownership to a reporting
43 entity and then attach meaningful sanctions to
44 those offences?

45 A Well, in the same way, I'm certainly not an
46 expert in Canadian law or indeed the field of
47 beneficial ownership. But of course, in so far

1 as one could meaningfully apply the threat of
2 criminal sanction in respect of any form of
3 criminal activity or any part of it, of course
4 it's likely to act as a deterrent.

5 Q And would that also likely increase the integrity
6 or quality of the information received by
7 reporting entities - people would be more
8 careful?

9 A I think it's getting to a point of complexity of
10 understanding on this that is beyond the scope of
11 what I was prepared to give during this evidence,
12 I'm afraid.

13 Q Fair enough. Fair enough. I want to generally
14 switch the topic to just general discussion of
15 trade-based money laundering in the context of
16 invoicing and under-invoicing, over-invoicing.

17 So as you've made clear, trade-based money
18 laundering, it's quite difficult to detect and it
19 makes it very difficult not just to detect but to
20 prosecute. One of the problems is -- well,
21 here's what I was wondering. Have you come
22 across the concept of requiring shippers of goods
23 to just tick a box on the shipping manifold -- on
24 the shipping manifest, rather, indicating their
25 declaration of whether the shipper and receiver
26 have commonality of beneficial ownership, and
27 then attach criminal sanctions to that?

28 A I've not come across that, no.

29 Q And the reason I bring that to your attention is
30 that one of the big problems with trade-based
31 money laundering is just the practicalities of
32 the commercial world. You have a shipper sending
33 goods. You have the shipping company, you know,
34 taking literally hundreds of goods at a time,
35 sometimes 10 or 20 different shippers for one
36 container, sending it, arriving at customs at
37 another country. There's no timely checking, you
38 know, for the receiver, what his beneficial
39 ownership is. So it's not -- you can't do it the
40 same way we do with financial institutions et
41 cetera. But just the fact that there's value
42 being traded by under-invoicing or over-invoicing
43 suggests that the parties are somehow related in
44 some manner or their ultimate beneficial
45 ownership is the same or they're part of a
46 criminal organization.

47 So does it not make sense -- it's one more

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Transparency International Coalition

1 step of narrowing in on them if we just say fine,
2 we can't -- we don't have the time for all of
3 that. We just want you to tick a box declaring
4 whether or not there's commonality of beneficial
5 ownership. Does that have any merit, in your
6 mind?

7 A Well, yes, I guess so, in theory. But again,
8 it's not an area that I've thought about much in
9 the past.

10 Q Fair enough. Okay. Alright. And the last topic
11 is the business model of different types of
12 crime. You talked previously about the drug
13 crimes in general and the need that they are
14 laundering their money, but they're also taking
15 some of those proceeds and investing them in more
16 drugs. They're buying more inventory, correct?

17 A Yes. Correct, yeah.

18 Q And whereas -- so that's an inventory-based
19 criminal business model. But there's many other
20 typologies, unlike the drug trade, where -- like
21 bribery, political corruption, fraud, extortion,
22 tax evasion -- there's no inventory per se to
23 replenish. And therefore, when criminals launder
24 these proceeds, they aren't quickly trying to
25 replenish their -- to launder their money and
26 replenish their inventory. They're laundering
27 their money, but they don't have to do anything
28 particularly quickly. So what I'm getting at
29 here is, those non-inventory money launderers,
30 they've got a much longer time horizon. And does
31 that suggest that money laundered from non-
32 inventory predicate crimes are more likely to be
33 parked in real estate for a longer period of
34 time? And if B.C. -- British Columbia is
35 concerned about money launderers buying houses
36 and leaving them empty, it may be more likely
37 from a non-inventory predicate crime than from,
38 say, the drug trade?

39 A No, I don't think I follow that logic. In a
40 sense I understand your point, that the
41 reinvestment costs are greater, of course, in the
42 field of drug trafficking than it would be from
43 some cybercrime related, of course, or major tax
44 evasion. Nonetheless, the sheer profits that are
45 made from drug trafficking are such that the
46 level of reinvestment is still a relatively small
47 part of the amount of profit and revenue

1 generated, leaving ample level of funds left by
2 property or indeed other forms of assets. So I
3 wouldn't agree with that statement on those
4 grounds, also on the grounds that drug
5 trafficking remains the -- in most countries the
6 largest criminal sector generating therefore the
7 highest amounts of profits. So the volume of
8 illicit proceeds generated by drugs are so large
9 and the profitability rates are so high that
10 there is more than enough scope for some of that
11 to enter the real estate or indeed other sectors.

12 Q And to be specific, when we're talking about
13 going into real estate, I'm talking about sending
14 money into real estate for a longer period of
15 time, because if you go in and go out, it often
16 gets less effect on the price. Yes, I know
17 there's ways of cheating on that, but it's the
18 longer-term money launderer who is suspected of
19 buying houses and leaving them empty for a large
20 period of time, so it hollows out the local
21 economy. That's part of the problem.

22 But you're saying no, both drug dealers --
23 if I take you correctly, both drug dealers and
24 non-inventory predicate crime money launderers,
25 they both can be parking for long periods of
26 time?

27 A Indeed, particularly at a more -- at higher
28 levels within a criminal syndicate operation. So
29 for those that are more like they're criminal
30 kingpins in an organization, in the end they are
31 receiving significant amounts of criminal
32 proceeds and have to, as you put it, park it
33 somewhere. And of course it's possible for them
34 to do that, even for a long term, by purchasing
35 real estate.

36 Q Right. Thank you. And of course, my last
37 question is, there's no reason to believe that
38 those persons are just from Canada, those
39 criminals, and in fact the predicate crimes for
40 that money laundered could very well be from
41 outside of Canada and the predicate crime had
42 nothing to do with what was committed in Canada.
43 Is that fair to say as well?

44 A It is a reasonable assumption certainly based on
45 my experience of what we have seen, for example,
46 on the European continent increasingly over the
47 last decade, that so much of the criminal impacts

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Commission

1 on society in different ways were generated by
2 criminal activity that involve criminals from
3 outside Europe or indeed involved activity taking
4 place at least in some part outside of the
5 European jurisdiction. And it was a significant
6 part of the transformation model of the criminal
7 economy in Europe that we observed over the last
8 decade to see just how much more global, even at
9 the local level of car thefts and house
10 burglaries, for example, just how much more
11 global the footprint of criminal activity had
12 become. I would expect that to apply in North
13 America in similar ways to Europe.

14 Q And you don't see that trend ending anytime soon,
15 I assume?

16 A If anything, it's accelerating.

17 Q Great. Sir Robert, thank you very much for your
18 insight. I appreciate it.

19 A Thank you.

20 MR. COMEAU: I'm done questioning. Thank you very
21 much.

22 THE COMMISSIONER: Thank you, Mr. Comeau. And now Ms.
23 Rajotte for the Province. Do you have questions
24 of Sir Robert?

25 MS. RAJOTTE: Thank you, Mr. Commissioner. The
26 Province does not have any questions for Sir
27 Robert.

28 THE COMMISSIONER: All right, thank you. Mr.
29 McCleery, do you have anything arising from the
30 questions of the other participants?

31 MR. MCCLEERY: Just one matter that I can address very
32 briefly, I believe.

33 THE COMMISSIONER: Yes.

34

35 RE-EXAMINATION BY MR. MCCLEERY:

36

37 Q Sir Robert, yesterday Mr. Smart for the B.C.
38 Lottery Corporation asked you some questions
39 about the importance of the role of Canada's
40 federal government in efforts to combat money
41 laundering. And you spoke in your evidence about
42 the importance of inter-jurisdictional
43 coordination and cooperation.

44 If we were to imagine, though, that a
45 federal level of government like ours or perhaps
46 a regional government like that of the European
47 Union, was to completely abdicate its

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Commission

1 responsibility to address money laundering -- and
2 I'm certainly not suggesting that that's the case
3 in either example -- but if it were, would it
4 still be worthwhile, in your view, for an
5 individual province or an individual European --
6 EU member state to take the action that it could
7 to address this issue even in the absence of
8 coordination and cooperation from a higher level
9 of government?

10 A Yes, indeed. In that highly hypothetical
11 situation, yes, it would, in the sense that there
12 are many levels, many indeed layers of
13 cooperation that we should seek to ensure the
14 optimum fight against financial crime, and
15 securing as many of those layers in an effective
16 way will secure the highest outcomes.

17 But I always make the case that one should
18 at least start even in the simplest localized
19 form. So it is a feature of -- it has become a
20 feature of more effective policing generally,
21 based on my European experience, for these layers
22 of cooperation to be built over time, starting at
23 a local level, then at a regional level within a
24 country, then at a national level and
25 increasingly at an international level. All are
26 important actually, and all contribute to the
27 efficiency of the overall system. And by not
28 having at all the availability of one of those
29 levers, absolutely doesn't make it therefore any
30 less necessary for one to do it at the other
31 levels. So if anything, it might make it even
32 more important to do so.

33 MR. MCCLEERY: Thank you very much. Mr. Commissioner,
34 that's my only question in re-examination.

35 THE COMMISSIONER: Thank you, Mr. McCleery. And I'll
36 just take a moment to ask if any other of the
37 participants have any questions of Sir Robert
38 before I excuse him. It doesn't appear so.

39 Sir Robert, I would like to thank you very
40 much for the time you've taken and the care with
41 which you have provided your evidence to us. I
42 think it's fair to say that your experience and
43 your expertise has enabled us to explore a very
44 broad range of important themes. You've provided
45 both insights, information and guidance to us
46 that will help us navigate through the
47 complexities of this subject. And I think it's

1 fair to say that in sum, you've made a very
2 helpful contribution to the work of the
3 Commission.

4 So thank you very much, and you are excused
5 from further testimony.

6 A Thank you, Mr. Commissioner.

7

8

9

(WITNESS EXCUSED)

10 THE COMMISSIONER: Now, Mr. Martland, I think we've
11 come to the end of our evidence for this portion
12 of the inquiry. When do you propose we adjourn
13 to?

14 MR. MARTLAND: Yes, Mr. Commissioner, we have
15 concluded the overview sessions. We have
16 hearings that are scheduled to run in the fall.
17 My suggestion would be that for our return date -
18 - and I apologize because I should have it at my
19 fingertips. But it's the first business day
20 after Labour Day, I believe, where we had
21 identified as the date to recommence our hearing.
22 I think it's September 8.

23 THE COMMISSIONER: It is September 8.

24 MR. MARTLAND: All right. Well, that's a relief. So
25 I think we stand adjourned to that date subject
26 to us notifying participants and, for that
27 matter, the public through the website if there's
28 any amendment or change to that scheduled date.

29 THE COMMISSIONER: Thank you. All right, thank you.
30 Just before I adjourn, I would like to thank all
31 the participants including, of course, Commission
32 counsel, for their participation in this portion
33 of the Commission's hearings. I recognize that
34 everyone has been labouring under the
35 difficulties imposed by COVID and I am very
36 appreciative of the fact that people have been
37 juggling other obligations and responsibilities
38 while still taking the time and making the effort
39 to consult with their clients, work on their
40 briefs, and appear virtually at these hearings.
41 It I think is a credit to all of you that we have
42 managed to do as much as we have throughout this
43 portion of the hearings.

44 So I will adjourn now to September the 8th
45 and I thank you all for your participation, and I
46 wish you good health in the meantime. Thank you.
47 We will adjourn.

1 THE REGISTRAR: The hearing is adjourned until
2 September 8th, 2020. Thank you.

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4 (PROCEEDINGS ADJOURNED TO SEPTEMBER 8, 2020)
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