

**PROCEEDINGS AT HEARING  
OF  
NOVEMBER 16, 2020**

**COMMISSIONER AUSTIN F. CULLEN**

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**November 16, 2020**

**(Via Videoconference)**

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

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

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

MR. MCGOWAN: Good morning, Mr. Commissioner. Today we have a panel of two witnesses, but before we commence with the panel I would like to tender three overview reports as next three exhibits.

THE COMMISSIONER: Thank you.

MR. MCGOWAN: And I'll just list them off and perhaps Madam Registrar can advise of the exhibit numbers. The first is "Anti-Money Laundering Initiatives of the Law Society of British Columbia and Federation of Law Societies of Canada."

THE COMMISSIONER: All right. 191.

THE REGISTRAR: That's right, Mr. Commissioner. Exhibit 191.

**EXHIBIT 191: Overview Report: Anti-Money Laundering Initiatives of the LSBC and FLSC**

MR. MCGOWAN: Next "Regulation of Legal Professionals in British Columbia."

1 THE COMMISSIONER: 192.

2 **EXHIBIT 192: Overview Report: Regulation of**  
3 **Legal Professionals in BC**

4 MR. MCGOWAN: Thank you. And finally "Legal  
5 Professionals and Accountants Publications."

6 THE COMMISSIONER: 193.

7 THE REGISTRAR: Exhibit 193.

8 THE COMMISSIONER: Thank you.

9 **EXHIBIT 193: Overview Report: Legal**  
10 **Professionals and Accountants Publications**

11 MR. MCGOWAN: Mr. Commissioner, the first panel  
12 consists of two representatives, from the  
13 Government of Canada, Mr. Wallace and Mr. Ngo.  
14 Madam Registrar, if you could please attend to  
15 affirming or swearing the witnesses.

16 THE REGISTRAR: Yes. Mr. Wallace and Mr. Ngo could  
17 you please unmute yourselves and turn on your  
18 video. Thank you.

19 **GABRIEL NGO, called for**  
20 **the commission,**  
21 **affirmed.**

22 THE REGISTRAR: Please state your full name, and  
23 spell your first name and last name for the  
24 record.

25 THE WITNESS: Gabriel Tang Ngo. First name Gabriel,

1                   last name Ngo, N-g-o.

2           THE REGISTRAR: Thank you.

3   **BRUCE WALLACE, called**  
4   **for the commission,**  
5   **sworn.**

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

9           THE WITNESS: Bruce James Wallace. Bruce is  
10                   B-r-u-c-e, Wallace is W-a-l-l-a-c-e.

11          THE REGISTRAR: Thank you. Counsel.

12          **EXAMINATION BY MR. MCGOWAN:**

13          Q     Thank you. I'm just going to start by asking  
14                   you a couple of questions about your background  
15                   before we get into the substance of your  
16                   evidence. Mr. Wallace, you've worked in  
17                   government for approximately 30 years?

18          A     That's correct.

19          Q     You've held a number of senior policy advisory  
20                   positions, including in the ministry of -- or  
21                   Department of the Solicitor General and with the  
22                   Canada Border Services Agency?

23          A     Correct.

24          Q     You are currently the Manager of Strategic  
25                   Policy and Reviews at FINTRAC?

1           A     That's right.

2           Q     How long have you held that position?

3           A     Five years.

4           Q     I wonder if you could take a moment and briefly  
5                 outline for the Commissioner the roles and  
6                 responsibility you have in your current role.

7           A     Absolutely. So my main responsibility is to  
8                 provide policy advice to senior executives at  
9                 FINTRAC on matters pertaining to FINTRAC's  
10                mandate, notably with regard to money laundering  
11                and terrorist activity financing. I'm also  
12                responsible for managing international  
13                relationships. This includes bilateral  
14                relationships with other financial intelligence  
15                units, as well as our engagement with  
16                multilateral fora such as the Financial Action  
17                Task Force, the Egmont Group of Financial  
18                Intelligence Units and the Asia/Pacific Group  
19                among others.

20                         Finally, I am responsible for providing  
21                         advice to the director of FINTRAC with regard to  
22                         our responsibilities under the Proceeds of Crime  
23                         (Money Laundering) Terrorist Financing Act to  
24                         conduct reviews of penalties assessed against  
25                         reporting entities when so requested by a

1 reporting entity.

2 Q Thank you for that. Mr. Ngo, how long have you  
3 worked in government?

4 A Thank you. So I've worked in government since  
5 2009.

6 Q Okay. You're currently situated within the  
7 Department of Finance as a Senior Advisor on  
8 Financial Crimes Policy?

9 A That is correct.

10 Q How long have you held that role?

11 A Since February 2017.

12 Q Okay. And I wonder if you could just take a  
13 moment and outline for the Commissioner the  
14 roles and responsibilities you have in that  
15 position.

16 A So in this current context -- so I work in the  
17 financial sector policy branch in the current  
18 role of financial crimes policy where I  
19 personally lead on legislation and regulations  
20 for the department as it relates to anti-money  
21 laundering and anti-terrorist financing. I  
22 provide support and advisory services to  
23 executives at the Department of Finance. And I  
24 also engage internationally on the Financial  
25 Action Task Force as part of the virtual asset

1 contact group and as head of delegation for the  
2 Asia-Pacific Group on money laundering.

3 Q Thank you. You're also one of the three  
4 Department of Finance representatives on the  
5 joint Federation of Law Societies of Canada/  
6 Government of Canada working group on money  
7 laundering and terrorist financing?

8 A That is correct.

9 Q And what does that role consist of?

10 A So I provide support. So my director general,  
11 Lynn Hemmings, is co-chair of the working group  
12 with Frederica Wilson from the Federation of Law  
13 Societies. The second member is my senior  
14 director, Justin Brown. So I provide support to  
15 both Lynn and Justin in this capacity, and I am  
16 a member of the working group.

17 Q Thank you. Mr. Wallace, I'm going to ask you a  
18 about a FINTRAC document that's been provided to  
19 the Federation of Law Societies. I don't know  
20 if you had direct involvement in creating it,  
21 but I understand you may have some familiarity  
22 with it.

23 MR. MCGOWAN: Madam Registrar, could we please have  
24 FLSC000083.

25 Q Yes. Sir, do you see on the screen before you a



1 FINTRAC research report?

2 A I do, yes.

3 Q Okay. Were you -- did you have any involvement  
4 in creating this document?

5 A I did not create the document, but I am familiar  
6 with the document.

7 Q Okay. And this is a report titled "Review of  
8 Money Laundering Court Cases in Canada." And  
9 what was the purpose of creating this document?

10 A It was basically to take a look at the extent to  
11 which we could identify any patterns or trends  
12 in terms of charges that have been brought  
13 forward under the Criminal Code with regard to  
14 money laundering. So between the years 2000 to  
15 2014 we pulled a sample of 40 such cases and  
16 analyzed them. There were 40 such cases  
17 involving 62 individuals, and they resulted in  
18 43 convictions, and we basically went through  
19 the cases looking for patterns and trends in  
20 terms of demographics.

21 Q Okay. The case was not specific to lawyers or  
22 legal professionals in that department?

23 A That is correct. It was not.

24 Q But it does touch on the legal profession and  
25 the involvement of lawyers to some extent in the

1 cases that were reviewed?

2 A It does. So the main takeaway with regard to  
3 the legal profession is that lawyers constitute  
4 the second largest demographic by occupation,  
5 accounting for 15 percent of the 63 individuals  
6 that were convicted. The largest demographic  
7 was business people or entrepreneurs.

8 Q Okay. Now, you've told us that FINTRAC selected  
9 a sample of 40 cases to review. Do you know  
10 what the larger number of cases that were --  
11 from which that sample was drawn from was? So I  
12 guess what I'm asking is how many cases where  
13 money laundering charges were laid existed from  
14 which the 40 cases were drawn?

15 A I don't have that information before me, but if  
16 you would like, I can come back to the  
17 commission with that information.

18 Q Thank you. I'd appreciate that.

19 And do you know how the 40 cases were  
20 selected? Were they random or was there some  
21 criteria that was applied?

22 A Typically in this type of project it would have  
23 been done on a random basis.

24 Q Okay. Under the heading on the first page "Key  
25 Findings" one of the findings is that the

1                   proceeds of crime that were generated were  
2                   almost entirely from drug-related or fraud  
3                   offences. And I gather that's relating to the  
4                   2000 to 2014 time period?

5           A       That would be across the totality of the years,  
6                   but that is consistent with what we see in  
7                   general patterns and trends across the board.  
8                   Most of our disclosures relate to either fraud  
9                   or drug trafficking.

10          Q       And does that remain the same today?

11          A       Yeah. Each category represents about 30 percent  
12                   of each of our disclosures, so 60 percent of our  
13                   disclosures would relate to, generally speaking,  
14                   fraud or narcotics trafficking.

15          Q       Okay. The fourth bullet from the bottom says:

16                   "The most frequently used vehicles or  
17                   financial instruments for ML were:  
18                   electronic funds transfers, companies  
19                   (often used for comingling proceeds or as  
20                   shells/fronts), and foreign exchange  
21                   transactions."

22                   My question is does that observation continue to  
23                   apply today in 2020?

24          A       We disclose a great deal of electronic funds  
25                   transfers, so I would ask that I get back to you

1                   with a firm answer on that question. But just  
2                   for context, last year alone we received over  
3                   17 million electronic funds transfer reports and  
4                   that is almost twice the amount of any other  
5                   type of report that we received. So electronic  
6                   funds transfers account for a significant amount  
7                   of information we both receive and disclose.

8                   Q    And do foreign exchange transactions continue to  
9                   figure prominently in the reports you receive?

10                  A    They do.

11                  Q    Are there jurisdictions from -- for which you  
12                   get a greater number of reports or stand out  
13                   more prominently?

14                  A    It's generally related or follows very closely  
15                   the amount of trade that we do. So trading  
16                   partners, the US, the UK, France, for example,  
17                   it generally falls along those patterns as well,  
18                   so largely related to trade with other  
19                   jurisdictions.

20                  Q    Okay. I gather from reviewing this report that  
21                   of the 40 cases reviewed, five of those were  
22                   from British Columbia?

23                  A    That's right.

24                  Q    Accounting for a little over 200 million in  
25                   funds laundered?



1 reporting exemptions in order to launder  
2 funds."

3 I wonder if you could just explain to the  
4 Commissioner what reporting exemption is being  
5 referred to there.

6 A In the legislation there are certain exemptions  
7 to reporting. I'm a bit reluctant to speak to  
8 the specifics of what is meant in the context of  
9 this report without delving a little further.  
10 But my understanding would be that given certain  
11 exemptions provided for in the legislation,  
12 certain types of transactions that are not  
13 reportable, for example, would be subject to  
14 exemptions, and then it would be up to legal  
15 professionals to make determinations about using  
16 those exemptions to avoid reporting  
17 requirements.

18 Q Right. And am I correct that the legislation  
19 initially contemplated lawyers reporting but as  
20 a result of a case brought by the Federation of  
21 Law Societies in a decision of the Supreme Court  
22 of Canada, lawyers were exempt from reporting as  
23 a result of that decision?

24 A That is correct.

25 Q And that still remains the case today?

1           A     That's right.

2           MR. MCGOWAN:  If that could be marked the next  
3                     exhibit, Mr. Commissioner.

4           THE COMMISSIONER:  Yes, very well.  That will be the  
5                     next exhibit.  I think we're at 194.

6           THE REGISTRAR:  Yes, exhibit 194.

7                     **EXHIBIT 194:  FINTRAC Research Report - Review**  
8                     **of Money Laundering Court Cases in Canada -**  
9                     **November 2015**

10          MR. MCGOWAN:

11          Q     Mr. Wallace, the study make reference to lawyers  
12                     that were convicted having taken advantage of a  
13                     reporting exemption.  Does the non-reporting of  
14                     lawyers, whether intentionally involved in money  
15                     laundering or not, pose challenges for FINTRAC  
16                     compiling and coordinating intelligence?

17          A     Yeah.  I mean, there's an international  
18                     requirement that legal professionals be covered  
19                     as a result of, I'll say, known or identified  
20                     vulnerabilities.  To the extent that there's no  
21                     requirement for lawyers to be reporting in  
22                     Canada, this would constitute a gap with regard  
23                     to the intelligence that we receive.

24          Q     And what is the advantage to somebody looking to  
25                     launder funds of transacting in a jurisdiction

1 where lawyers are not required to report?

2 A Compared to a jurisdiction where lawyers would  
3 be compelled to report or are required to file  
4 STRs, we would -- they would be -- we wouldn't  
5 have line to sight -- or line of sight into  
6 transactions conducted by lawyers on behalf of  
7 clients by virtue of the fact they are members  
8 of the legal profession and not required to  
9 report. So it would be one way of obfuscating  
10 activity by conducting it with a professional  
11 who has no such obligations.

12 Q Okay. Is Canada in respect of lawyers not  
13 reporting a bit of an outlier as compared to  
14 other similarly situated Financial Action Task  
15 Force members?

16 A Yes. It's been identified as a gap. In a 2016  
17 mutual evaluation of Canada it was raised as a  
18 concern by the FATF.

19 Q Mr. Ngo, I'm going to turn to you now and ask  
20 you a few questions about the working group that  
21 you were involved in. You're on the joint  
22 working group of the Federation of Law  
23 Societies, and I understand we'll be hearing  
24 from a representative from that organization  
25 next, but I wonder if, just to situate the



1 Commissioner, you could take a moment and very  
2 briefly explain what the Federation of Law  
3 Societies is.

4 A The Federation of Law Societies is a body that  
5 really reconciles the federal, provincial --  
6 sorry, not federal -- the provincial and  
7 territorial law societies. So they're basically  
8 an umbrella organization that reconciles the  
9 organizations across Canada.

10 Q Okay. And what is the purpose of the joint  
11 working group that you are a member of?

12 A So the joint working group is mandated to  
13 explore the issues related to money laundering  
14 and terrorist financing. And this is in the  
15 context of the legal profession. So we're  
16 looking to strengthen information-sharing  
17 between the law societies and the Government of  
18 Canada.

19 Q Okay. I'm just going to pull up -- ask that  
20 FLSC000118 be pulled up.

21 And while that is being pulled up by Madam  
22 Registrar, Mr. Ngo, I wonder if you could just  
23 explain to the Commissioner what the composition  
24 of this joint working group is. Who are the  
25 members?

1           A     So you're speaking to the terms of reference?

2                     Because you have an agenda in front of me.

3           Q     That is not the document that I wanted.  If I

4                     might just have a moment.  Thank you for

5                     identifying that, sir.  I'm looking for the

6                     document entitled "Terms of Reference."

7           A     Right.  So I can speak to that while you're

8                     locating the document.

9           MR. MCGOWAN:  It's in tab 1 in my binder, if that

10                    assists, Madam Registrar.  Thank you.

11           THE WITNESS:  Great.  So the representatives, the

12                    membership of this working group, as I mentioned

13                    earlier, the Department of Finance is a

14                    co-chair, so our director general is Lynn

15                    Hemmings.  So some of the memberships' names or

16                    member's names will have to be updated.  For

17                    example, Charlene Davidson is no longer on the

18                    working group.

19                                 But basically the Department of Finance

20                                 co-chairs of the working group, and we invite

21                                 other government departments on an ad hoc basis.

22                                 Standing members would include the Justice

23                                 Canada representatives and the Department of

24                                 Finance, whereas we would invite other agencies

25                                 and departments like RCMP, FINTRAC and CRA on an

1                   ad hoc basis. As it relates to the Federation  
2                   of Law Societies, it is co-chaired -- this  
3                   working group is co-chaired by Frederica Wilson  
4                   from the FLSC. And there are representatives  
5                   from the FLSC that come from specific law  
6                   societies, so there's Jim Varrow and the law --  
7                   that's from the Law Society of Ontario, sorry.  
8                   And then there's the Law Society of BC,  
9                   Newfoundland and Quebec as well that are  
10                  members.

11                 Q     Okay. Thank you. And I understand that the  
12                   group was intended to meet quarterly?

13                 A     That is correct, yes.

14                 Q     And when was the group initiated?

15                 A     It was announced that this working group was  
16                   created in June 2019 and this is following a  
17                   special ministerial meeting on money laundering  
18                   that occurred in June 2019 in Vancouver. So the  
19                   working group was announced publicly then and  
20                   the first meeting took place shortly thereafter  
21                   in June 2019.

22                 Q     And has the group met quarterly as intended?

23                 A     I would say yes, with the exception of  
24                   March 2020 when the pandemic hit and then we  
25                   sort of had to cancel that March meeting until

1                   we were able to re-establish virtual meetings.  
2                   So we were able to meet a total of three times  
3                   since June 2019.

4           Q       Okay. That's June 2019, December 2019 and  
5                   June 2020?

6           A       That is correct.

7           Q       Okay. And I wonder if you could provide for the  
8                   Commissioner an overview of the work that's been  
9                   undertaken by the group since its inception.

10          A       So -- yes. The working group has been very much  
11                   focused on information-sharing and sharing best  
12                   practices as the first three meetings, as you  
13                   can see. What we focused on in the first  
14                   meeting was actually FINTRAC making a  
15                   presentation on what its been seeing and then  
16                   sharing best practices.

17                   The second meeting was then the FLSC where  
18                   they made a presentation on their compliance and  
19                   audit functions and how their mechanisms and how  
20                   they leverage their enforcement authorities.

21                   With respect to the third meeting, the  
22                   Department of Finance delivered a presentation  
23                   on recent regulatory amendments, so that  
24                   includes changes that happened in 2018 and 2019,  
25                   where we also made recommendations to make

1                   enhancements to the FLSC's model rules, whereas  
2                   the CRA, Canada Revenue Agency, also provided a  
3                   presentation on terrorist financing and  
4                   charities and the nexus between the creation of  
5                   charities and the legal profession.

6                   MR. MCGOWAN: Okay. We'll come to some of those  
7                   presentations in a moment. In the interim,  
8                   Mr. Commissioner, if this could be become the  
9                   next exhibit, please.

10                  THE COMMISSIONER: Very well, 195.

11                  THE REGISTRAR: Exhibit 195.

12                               **EXHIBIT 195: Terms of Reference - Federation of**  
13                               **Law Society of Canada and the Government of**  
14                               **Canada Working Group on Money Laundering and**  
15                               **Terrorist Financing**

16                  MR. MCGOWAN: Thank you. If we could next bring up  
17                  Canada 001124.

18                  Q     This is a presentation prepared by Department of  
19                        Finance for presentation at the joint working  
20                        group?

21                  A     That is correct.

22                  Q     And it was presented in June 2020?

23                  A     Yes.

24                  Q     And were you responsible for providing this  
25                        presentation?

1           A     Yes, I delivered the presentation to the working  
2                    group.

3           Q     I wonder if you could just take a moment and  
4                    explain to the Commissioner what the  
5                    presentation covered and what the purpose of it  
6                    was.

7           A     So this presentation was to provide the working  
8                    group, specifically the FLSC, with an overview  
9                    of all the regulatory amendments that the  
10                  federal government made as it relates to the  
11                  proceeds of crime, money laundering and  
12                  terrorist financing regulations made under the  
13                  Act. So we provided a general explanation of  
14                  the scope of the amendments and then drilled  
15                  down further into the detailed summary of the  
16                  key measures that would be relevant to the FLSC.  
17                  And then we made recommendations or flagged some  
18                  of the amendments that we thought could be  
19                  considered by the Federation of Law Societies to  
20                  incorporate in their changes and amendments to  
21                  the model rules.

22           MR. MCGOWAN: Okay. Mr. Commissioner, if this could  
23                    be the next exhibit, please.

24           THE COMMISSIONER: Very well. That will be 196.

25           THE REGISTRAR: Exhibit 196.

1                   **EXHIBIT 196: Recent Amendments to Canada's**  
2                   **AML/ATF Regulations - June 25, 2020**

3                   MR. MCGOWAN: Thank you. And if we can leave the  
4                   presentation up.

5                   Q     You said the presentation addressed recent  
6                   legislative amendments to the legislation that's  
7                   relevant to the topics you're discussing. Did  
8                   any of those amendments relate to reporting by  
9                   lawyers?

10                  A     So to be clear, these are regulatory amendments  
11                  that were made, so that did not come up in the  
12                  discussion. So these relate to changes that  
13                  were made and published in June 2019 and  
14                  May 2020, so they did not include anything  
15                  related to reporting by lawyers.

16                  Q     If we could move forward, please, to page 12 of  
17                  the presentation. I'm looking at -- yes. Thank  
18                  you. This is the part of the presentation where  
19                  you are covering proposed future amendments to  
20                  the Federation of Law Society's model rules?

21                  A     That is correct, yes.

22                  Q     What are those model rules?

23                  A     In terms of what they currently are or what they  
24                  are in concept?

25                  Q     Yes, just speaking generally, what -- when you

1                   refer to the model rules, what rules are you  
2                   referring to?

3           A     Right.  So the Federation of Law Societies has  
4                   established model rules to combat money  
5                   laundering and terrorist financing, and then  
6                   these are adopted by the Federation council.  
7                   Once adopted it would be up to the individual  
8                   provincial and territorial law societies to  
9                   adopt and independently implement these model  
10                  rules.  So yes, that's, I guess, conceptually  
11                  what they are.

12          Q     Thank you.  The first recommendation that you  
13                  make in the presentation is that the Federation:  
14                               "Consider adding a formal requirement for  
15                               a lawyer or a legal firm to institute a  
16                               formal AML/ATF compliance program."

17                  And why did you make that recommendation?

18          A     So in FATF's -- so Financial Action Task Force  
19                  mutual evaluation in 2016 identified significant  
20                  gaps in terms of just the legal profession being  
21                  within the scope of Canada's regime.  So a lot  
22                  of these recommendations are actually aligning  
23                  or attempting to align the model rules with  
24                  federal requirements which are then de facto  
25                  aligned with international standards.



1                   So the compliance program itself is a  
2                   fundamental requirement that would apply to all  
3                   existing regulated entities under the federal  
4                   regime and this is an essential component of any  
5                   regulated entity's compliance requirements. The  
6                   compliance program itself would appoint somebody  
7                   that is responsible for anti-money laundering  
8                   and anti-terrorist financing compliance,  
9                   requirements and oversight, so the chief  
10                  compliance officer, having written compliance  
11                  policy and procedures, having training specific  
12                  to this area and then doing a risk assessment of  
13                  the program itself and then understanding the  
14                  effectiveness of that program every two years.

15                  So this was recommended because it's a  
16                  foundational requirement that all regulated  
17                  entities have and would go a long way in helping  
18                  the model rules meet not only federal  
19                  requirements but international standards.

20                  Q    Okay. And is it fair to say that a number of  
21                  the other recommendations that you made in this  
22                  presentation related to "know your client"  
23                  requirements?

24                  A    Yes, that's correct. So we made specific  
25                  recommendations for the FLSC's consideration as

1                   it relates to knowing your client, KYC, and that  
2                   includes updating verification ID, so  
3                   identification requirements and updating it to  
4                   include things like facilitating non-face to  
5                   face, leveraging existing mechanisms for  
6                   politically exposed persons, knowing source of  
7                   wealth, source of funds, and then having an  
8                   ongoing monitoring component that would sort of  
9                   tie the bow around the concept of know your  
10                  client and client due diligence.

11                 Q     Why did the Department of Finance feel it was  
12                   important for the Federation model rules to have  
13                   expanded "know your client" requirements?

14                 A     Again, the objective here is we're trying to  
15                   help the Federation align its model rules with  
16                   not only the federal requirements but  
17                   realistically and more practically the  
18                   international requirements. So this is really  
19                   to help us help them improve their model rules  
20                   so that we can strengthen the regime in a  
21                   practical perspective.

22                 MR. MCGOWAN: Thank you. We're done with that  
23                   document, Madam Registrar. If we could please  
24                   have FLSC000119.

25                 Q     Sir, you mentioned a presentation that was done

1                   about the audit programs of the Law Societies in  
2                   Canada, and do you recall who delivered that  
3                   presentation?

4           A        It would be the representatives from BC.  So I  
5                   see on the document it says Gurprit Bains, but I  
6                   do remember and recall that she did deliver that  
7                   as well as Jeanette McPhee.  Yes.

8           Q        Thank you.  And this is -- is this an outline of  
9                   that presentation that was presented to the  
10                  joint working group?

11          A        Yes.  This -- well, I mean these look like  
12                  speaking points, and also I would just note that  
13                  they include other representatives from other  
14                  Law Societies that deliver presentations.  But  
15                  these look like speaking points to me.

16          Q        Okay.  And what did you as the Department of  
17                  Finance representative take from those  
18                  presentations?

19          A        So our understanding and, you know, takeaway  
20                  from the presentation is that the Law Society of  
21                  British Columbia does have significant authority  
22                  to conduct investigations and do audits and  
23                  examinations of members.  So it was interesting  
24                  to sort of take away the fact that they have the  
25                  ability to refer cases to law enforcement and

1                   how that escalation process proceeds from a  
2                   practical perspective. And they had mentioned  
3                   that they do take the risk-based approach to  
4                   their audits.

5                   But yeah, that would be the main takeaway  
6                   from our perspective is that we weren't  
7                   necessarily aware of all of the authorities that  
8                   they have and that was a good presentation to  
9                   receive.

10                Q    Were the recommendations you made in the  
11                   presentation that you gave responsive to the  
12                   information you received in this presentation?

13                A    Not necessarily. So, again, I think just to  
14                   sort of parse the objectives of the  
15                   presentation, right, in terms of FINTRAC  
16                   presentation and the law societies'  
17                   presentations, those were very much focused on  
18                   best practices from a compliance perspective.  
19                   The Department and Finance and our delivery of  
20                   the presentation on the model rules were not  
21                   necessarily a response to the law societies'  
22                   presentations. It was actually, again, from a  
23                   practical objective just to strengthen the  
24                   Federation's model rules, aligning them with  
25                   federal requirements. So the short answer to

1                   your question is that no, we didn't create that  
2                   presentation to respond to the audit  
3                   presentation that were presented by the  
4                   Federation representatives.

5                   Q    Okay.  Having received the audit presentation  
6                   did the Department of Finance identify any  
7                   opportunities or areas where they thought the  
8                   approach or the regime could be improved in  
9                   British Columbia?

10                  A    Well, I mean, we did have some questions  
11                   about -- during the working group meeting some  
12                   questions were raised about how often internal  
13                   investigations from law societies and how often  
14                   these cases result in proportionate and  
15                   dissuasive sanctions, which -- you know, that  
16                   was sort of unclear to us, but we also had  
17                   questions about how often cases would be  
18                   referred to law enforcement.  So those were the  
19                   questions that we had out of this.

20                                The compliance program itself seemed quite  
21                   comprehensive.  Another followup [indiscernible]  
22                   all jurisdictions.  From our understanding it  
23                   seemed that the Law Society of British Columbia  
24                   and the Law Society of Ontario have significant  
25                   comprehensive programs, and it was a question of

1                   is this consistent across all jurisdictions. So  
2                   those would be the questions we had in the  
3                   context of the working group, and we did raise  
4                   that during the meetings.

5           Q       Do I take it from the answer that you've given  
6                   the Department of Finance or the Government of  
7                   Canada felt there perhaps should be an increase  
8                   in the number of cases that were identified  
9                   through the audit process that were referred to  
10                  either discipline proceedings or law  
11                  enforcement?

12          A       That would be a personal opinion. I'm not sure  
13                   that I could speak on behalf of the department  
14                   on that one. I can just say that it was unclear  
15                   to us the number of referrals to law  
16                   enforcement, if they were proportionate or  
17                   dissuasive. So that would be my answer on that  
18                   one. It was just unclear to us how often this  
19                   happens and the scope, especially in the context  
20                   of money laundering and terrorist financing.

21                   There are a lot of other cases -- again, the  
22                   law societies have a public interest mandate  
23                   rather than a money laundering/terrorist  
24                   financing one. So it was just making that clear  
25                   delineation between the two and just really

1                    understanding how we can actually reconcile the  
2                    two. That would be the main takeaway here for  
3                    that one, yes.

4                    Q    Okay. And were you ultimately provided with  
5                    information to inform you about the number of  
6                    cases that were referred to either discipline  
7                    proceedings or law enforcement?

8                    A    I would have to take that away. I'm not sure if  
9                    we received any specific statistics, but I can  
10                   look into that for you. I don't recall.

11                   MR. MCGOWAN: Thank you. If this could be the next  
12                   exhibit, please, Mr. Commissioner.

13                   THE COMMISSIONER: Very well, that will be 197.

14                   THE REGISTRAR: Exhibit 197.

15                   **EXHIBIT 197: Audit Program Presentation -**  
16                   **Outline and Overview**

17                   MR. MCGOWAN: Thank you. If we could please have  
18                   Canada 001254.

19                   Q    This is a presentation prepared by the  
20                   Department of Finance for this commission;  
21                   correct?

22                   A    That is correct, yes.

23                   Q    And this was prepared in anticipation of a  
24                   representative of the Department of Finance,  
25                   ultimately you, being interviewed and providing

1                   some information to the commission?

2           A       That is correct.  It was meant to serve as a  
3                   sort of foundation piece to direct the  
4                   conversation but also as an explanatory note  
5                   just to provide context of the creation of the  
6                   working group.

7           Q       Yes.  And the presentation contains information  
8                   about the impetus, the mandate and the work of  
9                   the group to date?

10          A       Yes, that's correct.

11          Q       Some of which you've covered already in your  
12                   evidence?

13          A       I believe so, yes.

14          Q       If we could turn to the third page of this  
15                   document, please.  So there are -- the heading  
16                   here, sir, is "Impetus for the Working Group."

17          A       Yes.

18          Q       And do I -- I gather that the four points below  
19                   set out some of the primary reasons the group  
20                   was created?

21          A       Yes, that is correct.

22          Q       I'm just going to read the first one to you.

23                   "The Government recognizes that the legal  
24                   profession represents a high AML/ATF risk  
25                   to the Regime, and continues to work



1                   towards bringing the legal profession into  
2                   the framework in a constitutionally  
3                   compliant way."

4                   And so I've got a couple of questions about that  
5                   for you. Does "bringing the legal profession  
6                   into the framework" mean the -- does the word  
7                   "framework" there mean the reporting framework?

8                   A        So the word "framework" in this context is quite  
9                   broad. It actually encapsulates the AML/ATF  
10                  regime in Canada as a whole. So not  
11                  specifically. We weren't trying to imply  
12                  reporting in this case. This was really to  
13                  improve Canada's regime and bring the legal  
14                  profession into the regime itself through this  
15                  working group.

16                 Q        If you're intending to bring them into the  
17                  framework, do I take it that they are currently  
18                  in the view of the Department of Finance out of  
19                  the framework to some degree?

20                 A        Right. Yeah. So in that respect the Supreme  
21                  Court of Canada's decision in 2015 has basically  
22                  left the provisions and the federal regulations  
23                  inoperative or just without the force of law, so  
24                  they are technically not part of the federal  
25                  regime. Law Societies are responsible for the

1 regulation of their members on a provincial and  
2 territorial basis, so they are technically not  
3 in the federal regime, so no, they are not.

4 They are, however, like I said, regulated by  
5 the law societies for public interest, and  
6 within that component there is -- there should  
7 be money laundering and terrorist financing  
8 responsibilities. So they are indirectly at a  
9 jurisdictional, provincial, territorial level  
10 part of the regime, but, again, it's about  
11 strengthening those requirements and aligning  
12 those with the federal ones.

13 Q Okay. When the impetus talks about continuing  
14 to work towards bringing the legal profession  
15 into the framework in a constitutionally  
16 compliant way, does that mean by way of  
17 legislation or legislative amendments?

18 MR. BRONGERS: Mr. Commissioner, I'm going to  
19 interject at this moment. It's Jan Brongers  
20 here. Can you hear me, Mr. Commissioner?

21 THE COMMISSIONER: Yes, I can, Mr. Brongers.

22 MR. BRONGERS: Thanks very much. I'm counsel on  
23 behalf of the Government of Canada. I'm just a  
24 little bit concerned about this line of  
25 questioning. Obviously this witness is not in a

1 position to provide evidence about parliament or  
2 the Government of Canada's intentions in terms  
3 of legislation. Mr. Ngo is here as a factual  
4 witness to explain what was discussed at the  
5 working group, but I don't think it's fair or  
6 proper to ask this witness questions about the  
7 Government of Canada's political and legislative  
8 intentions.

9 THE COMMISSIONER: Mr. McGowan.

10 MR. MCGOWAN: Well, Mr. Commissioner, I'm reading  
11 from a document prepared by the Department of  
12 Finance for this commission, and what I'm asking  
13 the witness is what a sentence in the document  
14 means. If he doesn't know, he doesn't know; if  
15 he does, then he should answer, in my respectful  
16 submission.

17 THE COMMISSIONER: Okay. Yeah. I mean, I think  
18 you're entitled to explore what the document  
19 says and what its implications are as far as  
20 he's aware. And I think it's fair that if he  
21 doesn't know or feels he can't answer, then he  
22 is entitled to say so. But the document is in  
23 evidence, or I guess shortly will be.

24 MR. BRONGERS: Thank you, Mr. Commissioner.

25 THE WITNESS: Right. So to answer your question,

1                   what does bringing the legal profession into the  
2                   framework mean here in this presentation? It's  
3                   really to work together with the Federation of  
4                   Law Societies and basically the law societies at  
5                   a provincial or territorial level to strengthen  
6                   their model rules because they are  
7                   self-regulatory organizations, to align the  
8                   federal requirements with the jurisdictional  
9                   requirements so that we can actually, you know,  
10                  improve Canada's standing in terms of how we  
11                  address international standards and meet those  
12                  commitments.

13                   So the answer to that is that we're focused  
14                   on the practical regulation of the legal  
15                   profession. That's the reason for this working  
16                   group. It's to share information, it's to share  
17                   best practices and in this context specifically  
18                   to my presentation in June was to make  
19                   recommendations how we can improve the law  
20                   societies' requirements or model rules as it  
21                   relates to an anti-money laundering and  
22                   anti-terrorist financing perspective. So that  
23                   is what that sentence means.

24                   MR. MCGOWAN:

25                   Q     Has there been any discussion at the working

1                   group about whether the federal government plans  
2                   to seek to introduce or amend legislation to  
3                   address the current lack of reporting by lawyers  
4                   in the face of the Federation of Law Societies'  
5                   decision?

6           A        I mean, again, in this context the working  
7                   group's mandate and the terms of reference are  
8                   quite explicit in terms of what it is that we're  
9                   trying to achieve. It is very much so in terms  
10                  of -- the immediate objectives is to share  
11                  information, improve best practices, ensure that  
12                  law societies are enhancing their programs and  
13                  helping them get better. We're trying to  
14                  improve the regime that way.

15          Q        Have you not been asked by the Federation  
16                   whether the government plans to attempt to  
17                   legislate reporting by lawyers in a  
18                   constitutionally compliant way?

19          A        Again, if we've been asked that question, and I  
20                   do believe we've been asked that question, the  
21                   short answer is that we're not in a position to  
22                   speak to political decisions or decisions to  
23                   introduce legislation. In that respect, like I  
24                   said, the terms of reference of the working  
25                   group are quite specific as to what it is that

1                   we're there to discuss.

2           Q     Right.  But for law societies making decisions  
3                   about how to most effectively regulate their  
4                   members to guard against the risk that they may  
5                   be used to facilitate money laundering, don't  
6                   they need to have an understanding of what the  
7                   Government of Canada ...

8           MR. BRONGERS:  Mr. Commissioner, again I'm going to  
9                   object to this line of questioning.  Commission  
10                  counsel is attempting to debate a political  
11                  issue with the witness as opposed to eliciting  
12                  facts about what was done at the working group.

13          THE COMMISSIONER:  Mr. McGowan.

14          MR. MCGOWAN:  Let me ask a different question, then.

15          Q     We're led to understand that a Department of  
16                  Justice representative communicated to the  
17                  Federation of Law Societies in 2018 that the  
18                  federal government was not interested in  
19                  legislating a regime to mandate reporting by  
20                  lawyers.  Are you aware of that communication?

21          A     I'm sorry, when was this communicated?

22          Q     2018.

23          A     I don't recall, but, I mean -- I'm not sure.  Do  
24                  you know who from the Department of Justice said  
25                  that?

1 Q I don't know.

2 A Okay. I'm not sure, but like I said, it would  
3 be interesting for a government official,  
4 especially a Department of Justice official, to  
5 speak to legislation that's is under the purview  
6 of the Department of Finance but also making  
7 statements about political decisions. So in  
8 that respect, if that statement was made, I'm  
9 not completely 100 percent sure how they can  
10 imply or infer future political decisions.

11 Q Okay. So in terms of the joint working group,  
12 the government hasn't communicated anything  
13 which would either confirm or be contrary to  
14 that statement if it was made to the Federation?  
15 Is that what I take away from your evidence on  
16 this point?

17 A So again I might be repeating myself, and it's  
18 not meant to be difficult, but the working group  
19 itself is very much focused on very narrow areas  
20 of discussion. So if -- well, it did come up,  
21 like you said, in terms of they asked us a  
22 question: do we plan on doing anything. The  
23 response has always been it's not up to us.  
24 It's not in terms of -- it's not part of the  
25 terms of reference. So the focus of the working

1                   group has been again to improve the lines of  
2                   communication between the government and the law  
3                   societies and strengthen the model rules.

4           Q       Okay. Do you know whether the model rules have  
5                   been modified in response to your presentation?

6           A       So my understanding is that the last changes to  
7                   the model rules happened in 2018 and that when  
8                   we made the presentation or delivered the  
9                   presentation in June, they were quite receptive  
10                  to it and had identified or even just stated  
11                  that most of these were for consideration and  
12                  they were going to consider them for the next  
13                  phase of amendments.

14           MR. MCGOWAN: Okay. Thank you. If this could be the  
15                  next exhibit please, Mr. Commissioner.

16           THE COMMISSIONER: Yes, very well. That will be --  
17                  198 is it, Madam Registrar?

18           THE REGISTRAR: Yes, exhibit 198.

19                   **EXHIBIT 198: Overview of the Federation of Law**  
20                   **Societies of Canada and the Government of Canada**  
21                   **Working Group on Money Laundering and Terrorist**  
22                   **Financing, Presentation by Department of Finance**  
23                   **Canada, Presentation to Cullen Commission,**  
24                   **October 2020**

25           THE COMMISSIONER: Thank you.



1           MR. MCGOWAN: Mr. Wallace, I'm going to turn to ask  
2                           you some questions about a presentation that I  
3                           understand you [indiscernible] with the working  
4                           group.

5                           If we could please have Canada 001123.  
6                           That's not the document that I'm looking for.  
7                           It's at tab 2 of my materials. My index has it  
8                           listed as CAN001123. Yes, that's the document.  
9                           Thank you.

10           Q    So this is a presentation for the Federation of  
11                           Law Societies and Government of Canada joint  
12                           working group?

13           A    That's correct.

14           Q    And did you prepare the presentation?

15           A    I presented it but I did not prepare it.

16           Q    Okay. So you're familiar with it, having  
17                           presented it to the joint working group?

18           A    I am.

19           Q    And I wonder if just in a very overview way you  
20                           could tell the Commissioner what the purpose and  
21                           contents of the presentation was.

22           A    Absolutely. So the purpose was threefold. The  
23                           first was to present an overview of  
24                           vulnerabilities in the area of risk for the  
25                           legal Federation. This was largely based on

1 open source information, much of which came from  
2 the Financial Action Task Force.

3 The second objective was to provide a brief  
4 overview of a project we had undertaken with  
5 regard to assessing the extents to which we saw  
6 transactions by legal professionals in our data  
7 holdings, specifically with regard to large cash  
8 transactions and our disclosures of financial  
9 intelligence.

10 And finally to provide an overview of a  
11 sanitized case in which a law firm was seen as  
12 part of transactions or part of a scheme to  
13 launder money.

14 MR. MCGOWAN: Thank you. If this could be the next  
15 exhibit, please, Mr. Commissioner.

16 THE COMMISSIONER: That will be exhibit 199.

17 THE REGISTRAR: Exhibit 198.

18 THE COMMISSIONER: I'm sorry. Didn't we just have  
19 198?

20 THE REGISTRAR: Oh, sorry. 199.

21 **EXHIBIT 199: Presentation to the Federation of**  
22 **Law Societies of Canada and the Government of**  
23 **Canada Working Group on Money Laundering and**  
24 **Terrorist Financing - June 26, 2019**

25 MR. MCGOWAN: Thank you, Mr. Commissioner. And if we

1                   could leave the document up, please.

2           Q     I'm going to have a few questions about it for  
3                   you, sir.  So pages -- pardon me, slides 2  
4                   through 5.  Those are the slides outlining the  
5                   areas of vulnerability that you communicated to  
6                   the joint working group?

7           A     That is correct.

8           Q     If we can go to slide 2, please.  This slide  
9                   outlines areas of money laundering and terrorist  
10                  financing risk in conducting certain activities  
11                  on behalf of clients?

12          A     I'm seeing the "Overview" slide right now, but  
13                  the next slide does identify activities.  That's  
14                  correct.

15          Q     Yes.  And one of activities identified as being  
16                  risky from a money laundering perspective is the  
17                  buying and selling of real estate?

18          A     That's correct.

19          Q     And why is that a risky endeavour?

20          A     Generally if you take a look at the nexus  
21                  between large flows of currency and law firms,  
22                  real estate transactions feature prominently.  
23                  It's a way of moving large amounts of currency  
24                  or value.  And the role of legal professionals  
25                  in real estate transactions means that they are

1                   potentially vulnerable from being taken  
2                   advantage of with regard to real estate  
3                   transactions by those attempting to launder  
4                   money.

5           Q       Is the possibility that they might be taken  
6                   advantage of enhanced in a jurisdiction where  
7                   lawyers are not required to report transactions?

8           A       If there were reporting requirements, I would  
9                   imagine that would be a deterrent to those who  
10                  would seek to do it and it would give us more  
11                  information to work with in terms of our data  
12                  holdings, yes.

13          Q       Thank you. The fourth point under risky  
14                  activities is the:

15                         "Creation, operation or management of  
16                         legal persons or arrangements, buying and  
17                         selling of business entities."

18                  I wonder if you could first just explain to the  
19                  Commissioner, perhaps for the benefit of those  
20                  watching, what the reference to "legal persons"  
21                  means.

22          A       This would be corporate structures or commercial  
23                  arrangements establishing companies, possibly  
24                  offshore companies or shell companies.

25          Q       Okay. And why is the operation or management of

1 corporate arrangements a risky activity for  
2 lawyers?

3 A With regard to typologies from money laundering,  
4 it's not uncommon for those seeking to launder  
5 money to use complex corporate structures,  
6 offshore companies and shell companies to  
7 facilitate the transfer of money to obfuscate  
8 the trail or to hide funds. Therefore  
9 individuals involved in establishing, setting up  
10 or providing advice on corporate structures play  
11 a key role, and to that extent legal  
12 professionals could also be taken advantage of  
13 in that regard.

14 Q Thank you. If we could turn to slide 6 please.  
15 I'm looking at the page number in the bottom  
16 right corner. The presentation sets out at  
17 pages 6 through 8 three typologies setting out  
18 examples of lawyers' involvement in potential  
19 money laundering and identifying red flag  
20 indicators.

21 A That's correct.

22 Q And are these sort of fictitious scenarios, or  
23 are they anonymized actual cases that FINTRAC  
24 reviewed?

25 A These are anonymized actual cases.

1           Q     Okay. Thank you. And do you know if charges  
2                    resulted from any of these fact patterns?

3           A     I do not.

4           Q     And if we turn to page 9. This sets out a list  
5                    of examples of suspicious money  
6                    laundering/terrorist financing indicators. And  
7                    is this page a compilation of the activities and  
8                    scenarios that came before in the pages where  
9                    the information was drawn largely from the FATF  
10                  documents?

11          A     That is correct. These are open source  
12                  indicators, largely taken from the Financial  
13                  Action Task Force. I should also point out that  
14                  some of these indicators are not specific to  
15                  legal professionals, but would also apply to  
16                  other reporting sectors as well. But this is a  
17                  fairly thorough list of the type of indicators  
18                  we would regard as being suspicious.

19          Q     Are these indicators specific to the Canadian  
20                  landscape?

21          A     No. Generally indicators for money laundering  
22                  or terrorist activity financing transcend, you  
23                  know, national boundaries and tend to be global  
24                  in nature. So these would be the type of  
25                  indicators that other financial intelligence

1 units globally would use as well.

2 Q Has FINTRAC done any analysis or research to  
3 determine the extent to which these suspicious  
4 indicators apply with the same force in the  
5 Canadian context?

6 A I'm not aware of any such study.

7 Q Okay. If we could please turn to the next  
8 slide. This is the portion of the presentation,  
9 sir, where you are communicating to the joint  
10 working group information about a study that was  
11 done into legal professionals by FINTRAC?

12 A Correct.

13 Q I wonder if you could just take a moment and in  
14 an overview way outline the nature of the study  
15 and the reason it was undertaken.

16 A Sure. It was a small-scale project in part to  
17 assess our ability to identify financial  
18 activities associated with legal professionals  
19 and their data holdings. As we've already  
20 discussed, there are no reporting obligations by  
21 legal professionals, so we're kind of left with  
22 having to assess the reports that we do get to  
23 see if there are transactions involving legal  
24 professionals.

25 So this was a short study focused on both





1 identified 5,000 transactions where we could  
2 identify legal professionals. So, A, the data  
3 itself is a small sample size.

4 The other point I'll make with regard to  
5 non-reporting of transactions. While it may  
6 appear self-evident because we are only dealing  
7 with large cash transactions of \$10,000 or more,  
8 this is not include transactions less than that.  
9 So we can't speak, for example, to the nature  
10 and scope or use of cash by legal professionals  
11 generally; it's only those transactions \$10,000  
12 or more.

13 And the last point I'll make is with regard  
14 to legal professionals given the methodology  
15 that we used, so it would have been people who  
16 are identified under occupation as a lawyer, as  
17 an example, or a party to the transaction was a  
18 law firm, we're not doing any work on -- or  
19 assessing any of the transactions by subjects  
20 who might want to exploit legal professionals;  
21 we are only looking at transactions involving  
22 legal professionals.

23 And maybe one more point. We are relying on  
24 third-party information for financials. So this  
25 would be reports from financial institutions,

1                   for example, casinos or other reporting entity  
2                   sectors.

3           Q       Okay. This is a presentation about the study,  
4                   but is the study itself reduced to writing  
5                   anywhere?

6           A       It never went beyond a draft report, so we --  
7                   for lack of a better word, we harvested the  
8                   information for the benefit of having the  
9                   conversation with the Federation of Law  
10                  Societies in the working group. But the work  
11                  itself was never finalized, it was never peer  
12                  reviewed and is currently still in draft.

13          Q       Okay. Thank you. If we could turn to the next  
14                  slide, please.

15                         So I gather from this, FINTRAC looked at two  
16                         sources of information to come up with their  
17                         statistics and draw conclusions. And the first  
18                         was disclosures from April 2013 to 2016?

19          A       That's correct.

20          Q       Why was that time frame chosen?

21          A       The work was done in and around 2016, 2017  
22                         originally, so the -- it would have been -- we  
23                         would have wanted fairly recent data. Because  
24                         this was a preliminary project as well and given  
25                         the data volumes that we get, we wanted to take

1                   a look at a fairly narrow window of time to try  
2                   and limit how much data. The larger -- the more  
3                   data we had, the longer it would take to  
4                   actually do the analysis. So it's a combination  
5                   of wanting recent data but not to pull enough  
6                   data to kind of, you know, lead to a long-term  
7                   study or to kind of overtax our analytical  
8                   system.

9                   Q    So when we're talking about disclosures, those  
10                   are disclosures by FINTRAC to a third party,  
11                   often law enforcement?

12                   A    Yeah, police law enforcement and national  
13                   security agencies. That's correct.

14                   Q    Okay. And do I gather if a disclosure was made,  
15                   the information that was disclosed met the --  
16                   met FINTRAC's threshold for disclosing?

17                   A    That is correct.

18                   Q    I wonder if you could just tell the Commissioner  
19                   what that threshold is.

20                   A    Sure. So we have an obligation under the act to  
21                   analyze and assess reports that are provided to  
22                   us. When the centre reaches reasonable grounds  
23                   to suspect that the information may be relevant  
24                   to a prosecution or investigation of money  
25                   laundering or terrorist activity financing, we

1                   are obligated to disclose that in the first  
2                   instance to the relevant police force, secondly  
3                   to law enforcement agencies and with regard to  
4                   threats against the security of Canada, national  
5                   security agencies.

6           Q       Thank you. The other collection of information  
7                   that FINTRAC looked at to conduct this study  
8                   were large cash transactions or LCTRs for the  
9                   same time period?

10          A       That's right.

11          Q       And I gather, given that lawyers are exempt from  
12                   reporting because of the Federation of Law  
13                   Societies case, none of these came from lawyers?

14          A       That's right. These would have been situations  
15                   in which either the conductor was identified in  
16                   the occupational -- the occupation field because  
17                   that is one of the field in the LCTR reports as  
18                   being a legal professional, or the transaction  
19                   was conducted by or on behalf of a law firm.

20          Q       Okay. Thank you. If we could please move to  
21                   the next slide. Page 14. This is a breakdown  
22                   of the -- well, maybe just tell the Commissioner  
23                   what this is. I won't put words in your mouth.

24          A       Sure. So this is a breakdown of the  
25                   transactions for cash activity broken down by

1                   type of activity. So, for example, deposit to a  
2                   personal account features prominently, as does  
3                   the purchase of casino chips followed by a  
4                   deposit to a business account, currency exchange  
5                   and then the purchase of negotiable instruments.

6           Q       So this is parsing into percentages the large  
7                   cash transactions that were received?

8           A       That is correct.

9           Q       Okay. And the largest of which were deposits  
10                  into personal accounts, so I assume LCTs from  
11                  financial institutions?

12          A       That would be right, yes.

13          Q       The second most prominent was the -- would this  
14                  be the purchase of casino chips as evidenced by  
15                  LCTs received from casinos?

16          A       That's correct. We did see the purchase of  
17                  casino chips in the data holdings. As I say, it  
18                  was a small sample size, so we always have to be  
19                  a bit concerned about anomalies in the data, but  
20                  we did see significant amounts of purchases of  
21                  casino chips in our data.

22          Q       Were you surprised to see that was the second  
23                  most prominent report?

24          A       I don't know if I was surprised. I mean, when  
25                  we had taken a look at the data, certainly

1                   personal accounts, business accounts, foreign  
2                   exchanges I would have expected. Purchase of  
3                   casino chips, it is higher than I would have  
4                   thought.

5           Q       The total amount reported with these 5,400 large  
6                   cash transaction reports was approximately  
7                   90 million?

8           A       That is correct.

9           Q       And are these percentages based on dollar value  
10                  or number of reports?

11          A       It would be number of reports.

12          Q       Okay. So we don't know from the 14.8 percent  
13                  for casino chips what percentage of the dollar  
14                  value of reported -- the dollar values reported  
15                  in these LCTs that represents?

16          A       Yeah, we wouldn't be able to make that  
17                  determination based on this information.

18          Q       And does FINTRAC have the ability to do a  
19                  regional breakdown of this information?

20          A       I'd have to get back to you on that  
21                  specifically. I think it may be difficulty to  
22                  do, but I can come back with a response just to  
23                  make sure I've got the right information.

24          Q       Okay. To the extent cash was deposited into the  
25                  trust account of a lawyer, where would that be

1 reflected here?

2 A That would be in "deposit to a business  
3 account."

4 Q And would a deposit to a business account  
5 necessarily deposit to a trust account or could  
6 that be to some other business account that the  
7 lawyer was associated with in some way?

8 A "Business account" is a broader term, so it  
9 could be a law firm's account, it could be trust  
10 account, could be a client account. It's a  
11 deposit to an account for the law firm itself,  
12 and while it includes trust accounts, it is a  
13 broader category.

14 Q Okay. And did FINTRAC in this analysis  
15 distinguish between conduct of a lawyer in their  
16 personal versus professional capacity?

17 A No, and that's a good point. And circling back  
18 maybe to the point on casino chips or deposit to  
19 a personal account, at least some of the reports  
20 that would have been pulled based on occupation,  
21 for example, would include reports on  
22 transactions conducted by people who happen to  
23 be lawyers, for example, but were in fact  
24 personal transactions.

25 Q And those reporting entities that reported these

1                   large cash transactions also, in many or all  
2                   cases, have an obligation to report transactions  
3                   they deem to be suspicious?

4           A       That is correct.

5           Q       Did FINTRAC conduct an analysis to determine the  
6                   percentage of these or number of these LCTRs  
7                   that were reported that were also reported as  
8                   suspicious?

9           A       We did not for reasons I had mentioned before in  
10                   terms of the desirability of, at least in the  
11                   first instance, having a fairly narrow scope of  
12                   this project. We stuck only to large cash  
13                   transactions with regards to this portion of the  
14                   study.

15          Q       So mixed in with these -- amongst these many  
16                   LCTRs could be a good number of transactions  
17                   that were perfectly legitimate?

18          A       That's correct.

19          Q       If we can turn to the next slide, please. What  
20                   does this slide represent?

21          A       So in -- when we took a look at the FINTRAC  
22                   disclosures involving legal professionals, we  
23                   basically identified law firms that were  
24                   identified in our disclosures. And then we  
25                   undertook, based on publicly available



1 information, a determination as to the primary  
2 areas of law that we are being practised by  
3 those law firms. And this is a breakdown of the  
4 type of law being practised with regard to the  
5 law firms identified in our disclosures.

6 Q Okay. I see one of the areas identified is real  
7 estate. Is that commercial or residential real  
8 estate or both?

9 A It would cover both.

10 Q Okay. Was there any filtering based on the  
11 lawyer's role in the transaction?

12 A Not that I am aware of. The main focus was just  
13 to identify the law firm and their primary scope  
14 of business. Having said that, also mindful of  
15 the fact that law firms, particularly large law  
16 firms, may have multiple areas of practice.

17 Q Was there any review of the disclosure to  
18 determine whether the lawyer's involvement in  
19 the transaction was in any way suspicious for it  
20 to be counted as a --

21 A We did not do any analysis as to that. This was  
22 strictly whether or not the law firm was  
23 identified and their -- and the nature of their  
24 work.

25 Q Could I have the next slide, please. If you

1                   could explain to the Commissioner what this  
2                   slide represents, please.

3           A       Yeah.  So we basically took the nature are of  
4                   the financial instruments that were used by  
5                   legal professionals in the disclosures and then  
6                   broke it down by category.  The vast majority of  
7                   transactions were conducted by negotiable  
8                   instruments.

9           Q       Okay.  What does "negotiable instruments" mean?

10          A       That would be bank drafts, certified cheques,  
11                   personal or business cheques.

12          Q       Okay.  And if we look at the third bar over in  
13                   the graph, "trust transactions," what does that  
14                   represent?

15          A       Those are transactions that involve either the  
16                   establishment or use of trust accounts.

17          Q       With respect to the type of instrument used or  
18                   the type of law firm or lawyer that was being  
19                   reported on, I gather we can't draw anything  
20                   about the reason why the lawyer was -- or how or  
21                   why the lawyer was involved in the transaction  
22                   or how or why he was reported on?

23          A       Not with regard -- other than being party to a  
24                   transaction that would trigger a large cash  
25                   transaction report, it would be difficult to do

1                   that type of analysis and that would be more in  
2                   line with taking a look at suspicion transaction  
3                   reports, and we didn't do that. So that type of  
4                   determination would be hard to make based on the  
5                   study that we had undertaken.

6                   Q    If it's reached the stage of FINTRAC determining  
7                   that the disclosure threshold is met, is it fair  
8                   to conclude that something about the transaction  
9                   was determined to be suspicious by FINTRAC?

10                  A    No. The disclosure threshold is -- you know,  
11                   it's reasonable grounds to suspect that the  
12                   information may be relevant to prosecution or  
13                   investigation. So relevancy itself doesn't  
14                   speak to whether it's exculpatory or  
15                   inculpatory; it just means that the information  
16                   may be relevant to an investigational  
17                   prosecution. So when we disclose the threshold  
18                   that we use, we don't make determinations as to  
19                   the suspicion of a particular transaction.

20                  Q    Okay. And nothing in this study gives us any  
21                   insight into the nature or quality of the  
22                   lawyers' involvement in the transactions that  
23                   were either reported on or disclosure was made  
24                   in respect of?

25                  A    That's correct.

1           Q     If we could go to the next slide, please.  What  
2                   does this slide represent?

3           A     So what we had done is we took a look at the  
4                   financial instruments used in the disclosures,  
5                   and then we broke it out by the -- what we  
6                   believe to be the predicate offence.  And for a  
7                   variety of reasons, you know, the table doesn't  
8                   add up to 200, but, for example, when we take a  
9                   look at the fraud category, 35 percent of the  
10                  transactions were actually electronic funds  
11                  transfers.  So this is an attempt to draw some  
12                  information out about whether or not there's a  
13                  link between the instrument used and the  
14                  predicate offence.

15          Q     Thank you.  If we could have the next slide,  
16                   please.  And does this slide set out some of the  
17                   most notable findings or information that was  
18                   obtained as a result of the study?

19          A     Yes, it does.  That's correct.

20          Q     The first point that is made is:

21                         "Cash deposits to trust accounts is of  
22                         minimal representation in FINTRAC  
23                         reporting, although LCTRs showing volume  
24                         going to personal accounts."

25                   What is the significance of that finding to

1 FINTRAC?

2 A Sure. So if you take a look at typologies and  
3 methodologies, particularly historical work,  
4 there is a fair bit -- I'll say, assertions that  
5 trust accounts are frequently used. That has  
6 been the case in other jurisdictions. You know,  
7 based on that one might have assumed that we  
8 would have seen the use of trust accounts and  
9 large cash transaction reporting. That was not  
10 the case. Having said that, because of  
11 limitations in the study and by virtue of the  
12 fact that we don't get reports from legal  
13 professional, it's really hard to say what's  
14 going on with regard to trust accounts, but we  
15 did not see much activity involving trust  
16 accounts in the reports that we had pulled in  
17 terms of large cash transactions.

18 Q If we could just go back to slide 14, please.  
19 Or pardon me, 16.

20 I wonder if you could assist the  
21 Commissioner in how we reconcile the conclusion  
22 that we've just been discussing with this graph  
23 that seems to -- chart that seems to indicate  
24 that 44 percent of the transactions reported in  
25 the disclosures involve trust transactions?

1           A     Absolutely.  So the comment on the page of -- or  
2                     at the top of page 18 with regard to cash  
3                     deposits to trust accounts is in reference to --  
4                     and while not clear on the slide, that was in  
5                     reference to the LCTR study.  So we did see the  
6                     use of trusts in disclosures that we made, but  
7                     we did not see significant amounts of reporting  
8                     coming to us.

9           Q     Okay.  Thank you.  What can you tell the  
10                    Commissioner about the extent to which this  
11                    study offers any insight into the role lawyers  
12                    are playing in the transactions that were  
13                    reported or disclosed in relation to?

14          A     I think it's illustrative.  I'd be cautious to  
15                    draw any conclusions about the nature or scope  
16                    of the legal professionals being implicated  
17                    directly or indirectly with money laundering.  I  
18                    think what it does demonstrate is that we are --  
19                    you know, large cash transactions are being  
20                    reported by financial institutions on legal  
21                    professionals.  We do disclose -- or we do see  
22                    transactions conducted by legal professionals in  
23                    our disclosures to law enforcement and police  
24                    organizations.  I think this is consistent  
25                    with -- you know, with the risk identified by

1                   Financial Action Task Force and elsewhere.

2                   More work would be required by ourselves to,  
3                   you know, make any pronouncements on things like  
4                   nature and scope, and frankly without reporting,  
5                   it would be very difficult to make those types  
6                   of determination. We would be left to having to  
7                   analyze information we get by third parties.

8                   Q    Okay. In the disclosures that were reviewed for  
9                   the purpose of this study, would those  
10                  disclosures contain further information about  
11                  the nature and quality of the involvement of the  
12                  lawyer which might shed more light on the topic  
13                  and help identify whether what's being  
14                  identified as knowing involvement in a  
15                  transaction of concern or unwitting involvement,  
16                  or perfectly legitimate conduct on the part of a  
17                  lawyer?

18                  A    It would be difficult to say without more  
19                  information. So when we make a disclosure, the  
20                  disclosure itself is mainly made up of  
21                  information -- transactional information, so  
22                  name of the people conducting the transaction,  
23                  account numbers, date, amount. And we really  
24                  don't have much to go on in terms of providing  
25                  any insight as to what this actually means or





1 reporting regime as compared to those that are  
2 outside the reporting regime?

3 A That would be correct. We do both, but the  
4 primary use of our resources is with regard to  
5 those who are currently covered by the regime.

6 Q Okay. And do I take it from your evidence as  
7 well that FINTRAC's lens into the legal  
8 professional sector is perhaps not as great as  
9 compared to those reporting professionals or  
10 professional sectors which are within the  
11 reporting regime?

12 A That is correct.

13 Q During your presentation to the joint working  
14 group did you provide any information to them  
15 how this -- the information contained in this  
16 study might inform their drafting or amendment  
17 to their model rules?

18 A I did not, no.

19 Q What should the Federation of Law Societies or  
20 the Law Society of British Columbia in your view  
21 take from the information that's revealed by  
22 this study?

23 A Well, I think it points to the fact that the  
24 legal professionals or financial activity and  
25 transactions conducted by legal professionals

1                   are reported on. As we had noted before -- as I  
2                   noted before, it's difficult to make any  
3                   ascertainment [sic] as to whether, you know, it's  
4                   implicit or complicit in any of these  
5                   activities. So to the extent that these  
6                   transactions are taking place by their members,  
7                   I do think there would be a benefit to making  
8                   sure that the law societies through the model  
9                   rules or another mechanism make sure that people  
10                  are aware of the risk that is posed by folks who  
11                  may want to take advantage of legal  
12                  professionals and the right mitigation strategy  
13                  is put in place to address these risks.

14                Q    Thank you. You made reference when we were in  
15                    an earlier portion of the presentation to the  
16                    risk factors that were identified flowing in  
17                    large part from FATF reports?

18                A    Yes.

19                Q    And is that the June 2013 "Money Laundering and  
20                    Terrorist Financing Vulnerabilities of Legal  
21                    Professionals"? Was that one of them?

22                A    That's one of them. There is also a guidance  
23                    document of our risk-based approach for legal  
24                    professionals -- just give me a second -- from  
25                    June 2019 as well. There's some information in

1                   there as to how legal professionals should  
2                   conduct their affairs to address risks.

3           Q       Okay.  And are those the two documents which  
4                   were primarily responsible -- or the primary  
5                   source of the information contained in the early  
6                   part of the presentation about risk factors?

7           A       That's correct.

8           MR. MCGOWAN:  Mr. Commissioner, I don't plan to  
9                   tender those two documents, and that's because  
10                  they are currently appendix D -- C and D to the  
11                  "Overview Report:  Legal Professionals and  
12                  Accountants Publications."

13          THE COMMISSIONER:  Thank you, Mr. McGowan.

14          MR. MCGOWAN:  Mr. Wallace, Mr. Ngo, thank you for  
15                  answering my questions.

16                         Mr. Commissioner, those are my questions.

17          THE COMMISSIONER:  All right.  Thank you.  I'll turn  
18                  now to Ms. George on behalf of the -- I am  
19                  sorry, I'll turn now to Ms. Herbst on behalf of  
20                  the Law Society of BC, who has been allocated  
21                  25 minutes.

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

23          **EXAMINATION BY MS. HERBST:**

24          Q       And hello, Mr. Ngo and Mr. Wallace.  As you have  
25                  heard from that, my name is Ludmila Herbst.  I

1                   am the lawyer for the Law Society of BC in this  
2                   inquiry, and I'd like to ask you some questions  
3                   flowing from Mr. McGowan's questions as well and  
4                   some of the document that have been touched on  
5                   today.

6                   And the first questions I'd like to ask  
7                   probably Mr. Wallace about are from exhibit 199,  
8                   which is that set of presentation slides we've  
9                   just been on also. Canada 1123 is its other  
10                  nomenclature. It's the presentation to the  
11                  Federation of Law Societies of Canada and the  
12                  Government of Canada working group on money  
13                  laundering and terrorist financing. And if it  
14                  would be possible for those to be pulled up,  
15                  that would be much appreciated.

16                  And I thank Mr. McGowan for going through  
17                  and clarifying some of the points that arose out  
18                  of these slides when I looked at them as well.  
19                  So I just have a few more remaining questions.

20                  My understanding is -- before getting to the  
21                  content, and I think this flows from the prior  
22                  testimony, Mr. Wallace -- these slides were  
23                  prepared specifically for the working group  
24                  meeting on June 26, 2019?

25                  A       That is correct, yes.

1           Q     And of course now these slides have become an  
2                    exhibit in this inquiry, but the slide deck  
3                    isn't something that FINTRAC itself prepared for  
4                    the purpose of becoming evidence in a legal  
5                    proceedings; is that right?

6           A     That's right. It was to share some information  
7                    with the Federation of Law Societies and the  
8                    working group.

9           Q     Okay. And Mr. McGowan touched on the two  
10                   documents that you drew a lot of the information  
11                   in the initial slides from or those who prepared  
12                   the slide deck drew from. I just wanted to  
13                   touch on a couple of points relating to that. I  
14                   believe in your testimony just now you referred  
15                   to the June 2019 version of a guidance document  
16                   that FATF had prepared "Risk Based Approach  
17                   Guidance For Legal Professionals"?

18          A     Yes, that's correct.

19          Q     I had understood possibly -- and I believe  
20                   exhibit -- or appendix D to the overview report  
21                   that was being referred to is a 2008 version of  
22                   that document. I just wanted to clear up  
23                   whether it was the 2008 version, if you recall,  
24                   or if you quickly received the June 2019 version  
25                   and slotted that information into the slides

1 right before the presentation?

2 A It's a good question. My recollection is that  
3 we did include information from the most recent  
4 because even though it had been  
5 June -- published in June 2019, we would have  
6 had access to previous versions on -- of this  
7 document. I can't speak to the nature of the --  
8 grosso modo the differences between the two  
9 reports, but we would have been using the most  
10 recent information.

11 Q Okay. Now, if I could go in the presentation  
12 slides to slide 6. And again, like Mr. McGowan,  
13 I'm referring to the page number at the bottom  
14 right of the page, and it's typology A. Thank  
15 you. That's perfect. And it's a reference to a  
16 Quebec lawyer receiving approximately  
17 USD 3 million in American currency.

18 And just to do a bit of cross-referencing,  
19 what I'd like to do now is to turn to  
20 exhibit 193, which is the 2013 -- so it's the  
21 other document to which you referred, I think,  
22 Mr. Wallace, the "Money Laundering and Terrorist  
23 Financing Vulnerabilities of Legal  
24 Professionals" document from FATF as well. And  
25 that's appendix C, I believe, to that document.

1 Thank you.

2 Now, if we can go to page 39 of that  
3 document, that would be appreciated. Thank you.  
4 And so you'll see at the top of the page -- that  
5 was great.

6 At the top of the page there's a reference  
7 to "Case 2: Deliberate misuse of client account  
8 without underlying legal transaction." And  
9 there I believe is the same case as typology A,  
10 a Quebec lawyer received approximately  
11 USD \$3 million in American currency?

12 A That is correct.

13 Q All right. And I see that at the bottom of that  
14 highlighted table or highlighted portion of the  
15 page there's a source "Schneider, S. (2004)."  
16 You may not know, Mr. Wallace, but are you aware  
17 that that is a study by Professor Schneider  
18 published in 2004?

19 A I'm aware of Professor Schneider's work, yes.

20 Q Okay. Now, if we could continue within this  
21 document to page 49, it's case 15 within the  
22 document.

23 THE REGISTRAR: Sorry, Ms. Herbst. Did you say  
24 page 15?

25 MS. HERBST: It's page 49 within the document.

1 THE REGISTRAR: Okay. This one? Because I don't --

2 MS. HERBST: I see. Sorry, in my printout.

3 THE REGISTRAR: Oh, okay. I see it now. This one.

4 MS. HERBST: Yes, exactly. Case 15. You were almost  
5 there. Thank you. Just on the next page. Yes,  
6 that's it.

7 Q So case 15 talks about a Canadian career  
8 criminal with a record, including drug  
9 trafficking and so on. And there's a reference  
10 underneath that to Schneider 2004.

11 And then just bearing in mind that that  
12 document, if we could flip back to the  
13 presentation slide, so exhibit 199. And go to  
14 the next slide, so slide 7, typology B. And so  
15 you'll see there it's a Canadian career criminal  
16 depositing cash into a bank account. And you'll  
17 agree that that's another cross-reference where  
18 the FATF 2013 report provided the source for the  
19 case?

20 A Yes. Maybe just a point of clarification. So  
21 you're correct insofar as the information is in  
22 the FATF report. How the FATF does its work  
23 generally is countries are invited to provide  
24 examples and sanitized cases. So while these  
25 appear inquiry this document for sure, the



1                   underlying nature or examples would have been  
2                   based on cases in Canada.

3           Q       Right. Right. Drawn, it appears from FATF's  
4                   footnote, from Professor Schneider's 2004 study?

5           A       Correct.

6           Q       Okay. Now, Mr. McGowan covered a lot about the  
7                   portion of the presentation that starts on  
8                   slide 10, which is the FINTRAC study, financial  
9                   activity associated to the legal profession in  
10                  Canada. I just have a few bits and pieces to  
11                  cover beyond that.

12                         So I understand -- and, Mr. Wallace, you've  
13                         covered this with Mr. McGowan -- the two sources  
14                         of information here were large cash transaction  
15                         reports and disclosures that FINTRAC made to  
16                         other bodies. Now, you and Mr. McGowan  
17                         discussed somewhat the issue of large cash  
18                         transaction reports. So those are the roughly  
19                         10 million or so reports that FINTRAC gets per  
20                         year?

21          A       Yeah. Last year we were -- the volume  
22                   fluctuates. Last year it was 10 million, but  
23                   it's usually in and around that amount.

24          Q       Okay. And you had clarified that those are not  
25                   the same as suspicious transaction reports. So

- 1                    someone might file a large cash transaction  
2                    report.  If not suspicious, nothing else  
3                    happens, but if suspicious, there's a suspicious  
4                    transaction report that would be filed as well?
- 5                    A     That's correct.
- 6                    Q     And FINTRAC, I understand, gets a substantially  
7                    lesser number of suspicious transaction reports  
8                    than it does large cash transaction reports?
- 9                    A     Yeah.  So last year, as I mentioned, LCTRs were  
10                   about 10 million, EFTs were about 17 million,  
11                   suspicious transaction reports were in about  
12                   280,000.
- 13                   Q     Okay.  Now, you and Mr. McGowan had also covered  
14                   the other category of material used for the  
15                   study, disclosures.  And you had mentioned that  
16                   disclosures are made by FINTRAC to police, law  
17                   enforcement and national security agencies; is  
18                   that right?
- 19                   A     That's correct.
- 20                   Q     Now, disclosures aren't made by FINTRAC to law  
21                   societies where a case might involve a lawyer;  
22                   is that right?
- 23                   A     That's correct.
- 24                   Q     And roughly speaking, per year I understand  
25                   FINTRAC makes over 2,000 disclosures or so?

1           A     Yeah. Last year was in the neighbourhood of --  
2                    I'm going to say 2,600. Thereabouts.

3           Q     Okay. Would you have a sense in the 2013 to  
4                    2016 period that was covered by the study  
5                    whether roughly we could say it was around 6,000  
6                    disclosures that FINTRAC made?

7           A     I'd want to verify the numbers. Disclosure  
8                    volumes have been increasing over the last  
9                    few years, so I think it would be more prudent  
10                  if I return back and get an answer after this  
11                  call.

12          Q     Okay. If you would be so good as to do that,  
13                  that would be appreciated.

14                    Now, the last slide in this presentation  
15                    relates to something called -- and that's  
16                    slide 19 -- refers to something called  
17                    "sanitized disclosure." And that is something  
18                    that is not attached here to this slide deck,  
19                    but it's something that FINTRAC presented during  
20                    the June 2019 working group meeting?

21          A     That's correct, yes.

22          Q     Now, I wonder, on -- and I appreciate this is  
23                  going to be an administrative detail that's not  
24                  directly interesting to you, Mr. Wallace, but  
25                  just to situate matters.

1                   On Friday commission staff kindly circulated  
2                   a set of attachments, one of which was a  
3                   document that was in Word and was headed  
4                   "Executive Summary." It had -- there was a  
5                   one-page diagram but also a Word document called  
6                   "Executive Summary." Is that something that  
7                   might be pulled up on to the screen? Thank you  
8                   very much.

9                   Now, Mr. Wallace, is this document a portion  
10                  of the sanitized disclosure that FINTRAC  
11                  presented at the working group meeting?

12                A    That is correct. That is the executive summary  
13                  of the I2 chart or the link chart that I walked  
14                  members of the committee through.

15                Q    I see. And, now, part of why it's called  
16                  "sanitized" is that information about names of  
17                  lawyers, law firms, provinces is stripped out?

18                A    That's correct. As you're likely well aware,  
19                  there are prohibitions on what we can say with  
20                  regard to information in our holdings and that  
21                  which we disclose. So in order to provide or  
22                  share this type of information, we need to  
23                  sanitize it.

24                Q    Okay. And so, for example, there's use of  
25                  letters in the alphabet and for -- so, say, in

1                   the third line in the first paragraph there's  
2                   1234567 Province Inc., so a very generic  
3                   description.

4           A       Yeah, that would denote a numbered company in a  
5                   province in Canada.

6           MS. HERBST:   Okay.   Now, I'd ask if this could be  
7                   marked as an exhibit, please.   I think we're at  
8                   around 200.

9           THE COMMISSIONER:   We are.   Thank you.   We'll mark  
10                   that.

11           THE REGISTRAR:   Exhibit 200.

12                   **EXHIBIT 200:   Sanitized Case Executive Summary**

13           MS. HERBST:   Thank you.

14           Q       Now, I'm asking a few -- the following questions  
15                   not at all to be critical of FINTRAC attendees  
16                   or presenters at the working group.   I realize  
17                   that FINTRAC has a view of -- and you've alluded  
18                   to that, Mr. Wallace, of its obligations and  
19                   restrictions on it in terms of sharing  
20                   information.   But I just wanted to get a sense  
21                   of access to the information that these types of  
22                   disclosures involve.

23                   Now, you'd agree that no unsanitized version  
24                   of this was provided to the Federation of Law  
25                   Societies representatives, including the law

1                    society representatives there at the working  
2                    group meeting?

3            A        That's correct.

4            Q        And in terms of this document itself, the  
5                    sanitized disclosure, did FINTRAC take away with  
6                    it the copy of the information that was shown?

7            A        We did. So I arrived at the meeting with a  
8                    number of charts, at the end of the presentation  
9                    distributed them, walked members through the  
10                    sanitized case, collected them and then left.

11           Q        And again not at all intending to be critical --  
12                    I realize this is part of FINTRAC's policy and  
13                    approach -- but for the 200-plus disclosures  
14                    that is are referred to otherwise in the  
15                    presentation slides, I take it that no copies of  
16                    those have been provided to the Federation of  
17                    Law Societies or member law societies?

18           A        That's correct.

19           Q        And the same goes, I take it, for the large cash  
20                    transaction reports that are referred to. No  
21                    copies of those have been provided to the  
22                    Federation or member law societies?

23           A        That's right.

24           Q        Now, Mr. McGowan and you had a bit of a  
25                    discussion about the nature of the study and

1                   what it reflected and what work it reflected.  
2                   And you'd mentioned it's a preliminary project  
3                   and there was a draft that's apart from the  
4                   presentation slides and it's not peer reviewed.  
5                   Has that draft ever been made public in any way?

6           A       No, not at all. It's largely, for lack of a  
7                   better word, I would say an internal working  
8                   document for reasons I'd mentioned to  
9                   Mr. McGowan. Our primary or main focus is with  
10                  regard to providing information as best we can  
11                  to existing reporting entity sectors. We do  
12                  have an interest in the extent to which legal  
13                  professionals, you know, are used wittingly or  
14                  unwittingly by those seeking to launder money.  
15                  But because they're not currently covered by the  
16                  legislation or the regime, it tends to be  
17                  something that we do when we can as opposed to  
18                  being something on the front burner.

19           MS. HERBST: Okay. And I do apologize. I see the  
20                  hearing officer. This exhibit can be removed  
21                  from the screen. Thank you very much for doing  
22                  that.

23                                Just turning a few pages back in  
24                                exhibit 199, the presentation slides, just  
25                                getting to some specifics that weren't already

1 touched on today. Oh, and I'm sorry. It's the  
2 presentation slide document which was up a  
3 moment ago, Canada 1123 or exhibit 199. Thank  
4 you. Perfect.

5 Q So on page 13, again going by the slide numbers  
6 at the bottom right. Now, there is a bullet  
7 point at the bottom of the page:

8 "Made by, on behalf of to account of legal  
9 professional or law firm."

10 This a very small point, Mr. Wallace, and you  
11 may not know, but do you know after the "on  
12 behalf" is that an "or" is that intended to be  
13 an "of"?

14 A On behalf of. So what this is getting at -- and  
15 there should be a comma after "of." Sometimes  
16 the person conducting the transaction may be  
17 somebody -- may be a third party. So if there  
18 was a transaction involving the account of a  
19 legal professional or made by a law firm, it  
20 would be included or if there was a transaction  
21 made on behalf of but maybe by a third party,  
22 that would also be included.

23 Q Okay. Now, you had noted in discussion with  
24 Mr. McGowan that the transactions that are  
25 reflected in the large cash transaction



1 reports -- and perhaps we could turn to  
2 page 14 -- aren't necessarily in a lawyer's  
3 professional capacity; they can also be in a  
4 lawyer's personal capacity?

5 A Yes. That's correct.

6 Q So, for example -- and I'm certainly -- I'm not  
7 asking that you confirm whether this is an  
8 example within the large cash transaction  
9 reports, but just generally speaking if I took  
10 an example. If a lawyer were to sell a used  
11 car that he or she owns and deposit the money in  
12 their own bank account and if they were lucky  
13 enough to get over \$10,000 for it, would that be  
14 a kind of transaction that might be caught  
15 within a large cash transaction report for this  
16 purpose?

17 A It could be. And if their occupation was listed  
18 as "lawyer" they could find themselves in this  
19 analysis. And I think that accounts to some  
20 extent for why we're seeing purchase of casino  
21 chips as well.

22 Q I was wondering about that as well. It might be  
23 a weekend or after-work endeavour here. Okay.

24 Now, Mr. McGowan had touched on this also in  
25 terms of what the percentage is of, and I

1 believe you said that in terms of percentages  
2 here they're percentages of the large cash  
3 transaction reports. So, for example, 57.7  
4 would be of the number of reports?

5 A That's my understanding. But in the interests  
6 of making absolutely sure on that, perhaps if  
7 you'll indulge me I can confirm that. That is  
8 my understanding, though.

9 Q Thank you. I -- that would be good to know  
10 because I was going to flag -- just at the  
11 bottom bullet point in that slide, it says:

12 "Deposits into business accounts is  
13 currently only 9.45% for overall  
14 value ..."

15 And so it made me wonder if that was --

16 A Yeah, no, noted, and I'll confirm.

17 Q Okay.

18 A Apologies.

19 Q Thank you. Now, I know this slide refers to  
20 lawyers. The slide before I think refers to  
21 legal professionals. Do you know whether it was  
22 simply lawyers who were tagged for putting into  
23 these slides or was it also, say, notaries or  
24 paralegals or other people who might be involved  
25 in the legal profession?



1                   or other media types of advertising; it would be  
2                   based on other publicly available information,  
3                   open source.

4           Q       Okay. And you had mentioned in your answers  
5                   previously that, you know, there might be a bit  
6                   of a -- I'm not sure what flows from this, but  
7                   it might be more difficult for law firms that  
8                   are general service that practice in different  
9                   areas. Do you know what was done in those  
10                  cases?

11          A       I don't, specifically. I do know -- and it was  
12                   one of the reasons I mentioned it -- in making a  
13                   distinction between corporate law and commercial  
14                   law, for example, it's not out of the realm of  
15                   possibility that the same firm would offer both  
16                   services, so we would make the call -- or a  
17                   judgment call based on the information before us  
18                   there.

19          Q       Okay. Do you -- were printouts of websites that  
20                   might have been consulted or other open source  
21                   materials preserved for future reference when  
22                   the study was done?

23          A       I don't know.

24          Q       Now, in terms of disclosures -- and again you  
25                   and Mr. McGowan reviewed the -- what

1                   implications, if any, could be drawn quite  
2                   extensively. I just wanted to ask, do you know  
3                   whether the disclosures that were made  
4                   ultimately resulted in any charges? Not  
5                   necessarily of lawyers, I mean, but of anyone in  
6                   terms of a particular disclosure?

7           A        The short answer's no. I will point out that  
8                   this question comes up frequently. Some of the  
9                   challenges we have with regard to tracking that  
10                  information has to do with the fact that a lot  
11                  of, well, many -- most money laundering  
12                  investigations are long and complex. So a  
13                  disclosure issued at, say, the beginning of, you  
14                  know, the calendar year may not result in  
15                  charges for years after that.

16                         So, you know, while we like to sort of try  
17                         to track that information, it's not an exact  
18                         science and so we -- I don't have that  
19                         information.

20           Q        Okay. Now, again just a couple of final  
21                   questions on the presentation, and again not at  
22                   all to be critical of FINTRAC or attendees.  
23                   It's just to get a bit of the chronology here.  
24                   So at the June 2019 meeting at which these  
25                   slides were presented, you'd agree that the

1 Federation representatives and the law societies  
2 present had some questions about material within  
3 the slides?

4 A They did, yes.

5 Q And very fairly FINTRAC noted that it would go  
6 and drill down to clarify the meaning and  
7 sources for some of the data?

8 A Yeah, this was a year and a half ago, but that  
9 sounds consistent with how I would usually  
10 respond in those types of situations.

11 Q Okay. Now, I understand from the agenda  
12 certainly that there may have been some further  
13 discussion of these slides or perhaps some  
14 answers to questions at a December 2019 meeting  
15 of the working group.

16 A Yes. Although, as I say, it's not coming to top  
17 of mind in terms of what those issues were. So  
18 if you have anything to help in that regard,  
19 that would be helpful.

20 Q I think we've covered certainly some of them  
21 during our discussion. And would you be able to  
22 say or confirm my understanding that there might  
23 have been some questions outstanding from the  
24 June 2019 meeting that weren't yet addressed at  
25 the working group?

1           A     I'd have to check my notes on that, but it is  
2                   possible, yes.

3           Q     Okay. Now, just -- Mr. McGowan asked some  
4                   questions about reporting in general. Just  
5                   following up on that. In terms of entities that  
6                   do report, I understand that FINTRAC uses as its  
7                   primary instrument for assessing compliance by  
8                   reporting entities something called a compliance  
9                   examination?

10          A     That's correct.

11          Q     And are there roughly 500 compliance  
12                   examinations or so per year across Canada by  
13                   FINTRAC?

14          A     It changes from year to year. I think it's  
15                   closer to 400, but as I say, depending on the  
16                   complexity of the exams and the number of exams,  
17                   it can fluctuate from a couple of hundred to  
18                   more than that. But yeah, we would be in the  
19                   sort of 400 range per year.

20          MS. HERBST: Okay. Now, I think the last group of  
21                   questions I have relates to a document that  
22                   Mr. McGowan dealt with in some detail which is  
23                   FLSC document 83, which is exhibit 194, I  
24                   believe. If that could be pulled up, that would  
25                   be much appreciated. Thank you.

1           Q     And again, Mr. Wallace, this is one of those  
2                   documents that while it's become an exhibit in  
3                   this proceeding, so I'm asking questions about  
4                   it, it's not something that FINTRAC prepared for  
5                   the purpose of becoming evidence in a legal  
6                   proceeding?

7           A     That's correct.

8           Q     Okay. Now, on page 2 of the document I just  
9                   wanted to confirm that it says -- or your  
10                  understanding that this is so. In the second  
11                  paragraph there, three lines down, it says:

12                         "Information on these cases was collected  
13                         from court documentation made available  
14                         through the Canadian Legal Information  
15                         Institute."

16                  And at the end of that paragraph:

17                         "... only public sources of information  
18                         were used."

19                  And I see at the top of the page it says:

20                         "This report does not contain FINTRAC data  
21                         or information holding s."

22                  So it's fair to say that if someone would like  
23                   more information about the cases that are  
24                   analyzed here, you'd refer them to CanLII as a  
25                   source of information?



1           A     Generally.  Having said that, if there's an  
2                   interest, you know, I certainly could see what  
3                   we could do.  But given the nature of this  
4                   document and that it's based on publicly  
5                   available information, there's probably not a  
6                   whole lot more that we have other than what's in  
7                   documentation.  And if memory serves, there is  
8                   an annex at the back of this document that I  
9                   think describes the cases.

10          Q     So I may have a couple of questions just on  
11                   particular cases, Mr. Wallace, and I know you're  
12                   familiar with the document even though you  
13                   haven't prepared it.  If you don't know -- if  
14                   you don't know, of course please just say.  One  
15                   thing that I want to ask about which is within  
16                   the document -- and this is on page 3, so the  
17                   next page -- you and Mr. McGowan had a bit of a  
18                   discussion in terms of provincial breakdown of  
19                   the different cases analyzed.  And there was --  
20                   Mr. McGowan drew, of course, to everyone's  
21                   attention the fact that the BC total here -- so  
22                   three lines down, BC -- is skewed by what it  
23                   says under the bottom of that table that there  
24                   was a particular event or incident that occupied  
25                   a lot of that chunk, so over \$200 million.

1                   I just wanted to touch on a sentence that's  
2                   before that table that the stats should not  
3                   necessarily --

4                   "... should not be interpreted as volume  
5                   of money laundering in each province given  
6                   that proceeds did not necessarily  
7                   originate or stay within provincial  
8                   boundaries, based on the facts outlined in  
9                   the court documentation."

10                  Is that your understanding as well?

11                  A     That's correct.

12                  Q     Okay. Now, it's fair to say -- so there was  
13                       some discussion with Mr. McGowan about lawyers  
14                       being involved in these cases. Would you agree  
15                       that as in the case of the presentation slides,  
16                       it's not necessarily the case that lawyers were  
17                       acting in a professional as opposed to private  
18                       capacity when becoming involved in the cases  
19                       that were profiled here?

20                  A     That would be correct, yes.

21                  Q     So, for example -- and I turn, if we could, to  
22                       page 11 of the document. Just scrolling down a  
23                       little bit further in. Thank you.

24                       So in the middle of the page under "High  
25                       Value Purchases" there's a reference to a

1 similar case is that of Grmovsek, who was  
2 identified as a lawyer a few pages before. And  
3 it says he "had been unemployed since 1997 and  
4 is said to have lived off the earnings of his  
5 insider stock market trading."

6 Now, Mr. Wallace, this is -- this may be one  
7 of those cases where you're not familiar with  
8 the background yourself in terms of CanLII. But  
9 my look at the CanLII sources suggested that  
10 when Mr. Grmovsek was disbarred by the law  
11 society, it made a point of saying that none of  
12 Mr. Grmovsek's conduct was in his professional  
13 capacity. Would you agree that that's a  
14 possibility?

15 A I am not familiar enough with this case, so I'd  
16 be reluctant to comment on it.

17 Q Okay. Fair enough. Now, just if we could go  
18 back a little bit further up to -- back to  
19 page 2. And there was some discussion in this  
20 regard as well with Mr. McGowan about the  
21 concept of sample and what was being analyzed.  
22 There is a note under the table there that this  
23 is not an exhaustive review of all Canadian  
24 court cases. Every effort was taken to identify  
25 a substantial list of cases for analysis, but of

1 course, as you note, not all are accessible  
2 through CanLII, and if they didn't have  
3 sufficient details, they weren't necessarily  
4 part of this exercise.

5 So with that context -- and you'd agree with  
6 that description?

7 A Yes.

8 Q With that context, I just want to also confirm  
9 your understanding of something on page 16. And  
10 I'm sorry for the -- sorry for the scrolling,  
11 but if we could go to page 16 of the document as  
12 well. And in response to --

13 MS. HERBST: Mr. McGowan has asked if I'm close to  
14 being done. Yes, indeed I am. I'm just pausing  
15 a little bit more on this document as it was  
16 covered in more detail than I had anticipated,  
17 but very close to being done.

18 Q On page 16 there is a reference to -- in the  
19 last paragraph, about six or seven lines from  
20 the bottom:

21 "Given the sample size of 40 cases,  
22 results discussed herein are not  
23 necessarily generalizable to all money  
24 laundering prosecutions in Canada,  
25 although they do seem consistent with what

1                                   we know to date about this offence."

2                                   You'd agree with that qualification as well,

3                                   Mr. Wallace?

4                   A     I would, yes.

5                   Q     And, now, I know that covered in here -- and you  
6                                   touched on this with Mr. McGowan -- are cases  
7                                   from the 2000 to 2014 period. You'd agree --  
8                                   and I think in the context of your discussion of  
9                                   disclosure this came up as well, there is a  
10                                  certain time lag before cases that are  
11                                  investigated come to court or come to fruition  
12                                  in some way. You'd agree that some of the  
13                                  events here in terms of the cases that are  
14                                  examined would have predated 2000?

15                  A     I can't confirm for sure. But given the context  
16                                  we've discussed, I would think that would be the  
17                                  case. At least a few of them would predate  
18                                  2000.

19                  Q     Okay. That's certainly my understanding of some  
20                                  of the cases involving lawyers, but I will leave  
21                                  it to CanLII to address that. And thank you for  
22                                  that fair qualification.

23                                  And then the last point I wanted to just  
24                                  raise, there was some discussion with  
25                                  Mr. McGowan -- and this may relate to Mr. Ngo as

1 well, but I think particularly Mr. Wallace -- of  
2 the impact of the Federation of Law Societies of  
3 Canada case and the extent to which that's dealt  
4 with with reporting. You're not providing a  
5 legal analysis of that case yourself; is that  
6 correct?

7 A That's correct.

8 MS. HERBST: Okay. Thank you. Those are my  
9 questions.

10 THE COMMISSIONER: Thank you, Ms. Herbst.

11 Mr. Westell, I think what we'll we do is  
12 take a 15-minute adjournment before we resume  
13 with your examination.

14 MR. WESTELL: Thank you, Mr. Commissioner. I can  
15 just say that because of what has been dealt  
16 with by both counsel that have examined, I will  
17 not need the full 25 minutes. I will probably  
18 need something in the range of five to  
19 ten minutes, just for the benefit of everybody  
20 involved.

21 THE COMMISSIONER: All right. Well, if you wish,  
22 then we can proceed right now.

23 MR. WESTELL: No, no. I'm happy to take the break  
24 first, if that's fine with everyone. I just  
25 wanted to put everybody on notice.

1 MR. MCGOWAN: We will need to take a break following  
2 Mr. Westell's examination to get the next --  
3 because we'll be moving to a different witness,  
4 so if that impacts on your decision.

5 THE COMMISSIONER: Yeah, that's what I was thinking  
6 of, Mr. McGowan, that we might have a break, in  
7 any event. So if you're ready to go now,  
8 Mr. Westell.

9 MR. WESTELL: I'm ready. I'm ready. Yeah. And I'll  
10 be relatively brief.

11 THE COMMISSIONER: Thank you.

12 **EXAMINATION BY MR. WESTELL:**

13 Q Mr. Ngo and Mr. Wallace, my name is Kevin  
14 Westell. I am counsel for two parties to this  
15 commission. I'm counsel for the Canadian Bar  
16 Association's BC branch and I'm also counsel for  
17 the Criminal Defence Advocacy Society with  
18 slightly different but overlapping mandates  
19 here, and there's no clash between those  
20 mandates when it comes to asking both of you a  
21 few questions.

22 I think I'm going to focus -- as I mentioned  
23 just a minute ago, much of what I had hoped to  
24 cover has been covered in the examinations by  
25 other witnesses [sic]. But I do want to such on

1 something that arose with you, Mr. Ngo, and in  
2 relation to the questioning about -- let me just  
3 get my reference to the exhibit number -- what I  
4 think was exhibit number 198. In any case, it's  
5 document -- Canada's document 001254. The slide  
6 deck. And particularly page 3, bullet 1.

7 And I enter into this line of questioning  
8 knowing and accepting that there's been some  
9 objection to some of the questioning or some  
10 concern by Mr. Brongers that I not go too far  
11 afield from what the witness can testify to.  
12 And I'll be -- take care to do that and leave  
13 time for Mr. Brongers to object if he thinks I'm  
14 going somewhere where I shouldn't be.

15 But it's really the fact that this is -- as  
16 Mr. McGowan mentioned, this is a document  
17 submitted by, if I look at the first page,  
18 Department of Finance Canada for this particular  
19 commission itself. And it's very important, in  
20 my respectful submission, that we drill down on  
21 what the words mean. What the words mean to  
22 you, sir, Mr. Ngo, when it comes to that  
23 paragraph. I'll read it again.

24 "The Government recognizes that the legal  
25 profession represents a high AML/ATF risk



1                           to the Regime, and continues to work  
2                           towards bringing the legal profession into  
3                           the framework in a constitutionally  
4                           compliant way."

5                           So to break that --

6                   MR. MCGOWAN: I've just been advised that there is an  
7                           issue with the connection. And I'll just ask  
8                           Madam Registrar if she can confirm whether we're  
9                           okay to continue or if we need to stop for a  
10                           moment.

11                   THE COMMISSIONER: Thank you.

12                   THE REGISTRAR: Unfortunately we need to stop for a  
13                           moment. I don't have Gabriel.

14                   THE COMMISSIONER: All right. I think what we'll do,  
15                           then, is take --

16                   MR. WESTELL: Thank you.

17                   THE COMMISSIONER: -- the adjournment, Mr. Westell.  
18                           And we'll return in 15 minutes.

19                   MR. WESTELL: Thank you.

20                   THE REGISTRAR: This hearing adjourned for a  
21                           15-minute recess until 11:41 a.m.

22                           **(WITNESSES STOOD DOWN)**

23                           **(PROCEEDINGS ADJOURNED AT 11:26 A.M.)**

24                           **(PROCEEDINGS RECONVENED AT 11:40 A.M.)**

25



1                   by Mr. McGowan. And I'm going to read the  
2                   passage, which is page 3 of that exhibit and  
3                   bullet number 1.

4                   "The Government recognizes that the legal  
5                   profession represents a high AML/ATF risk  
6                   to the Regime, and continues to work  
7                   towards bringing the legal profession into  
8                   the framework in a constitutionally  
9                   compliant way."

10                  I'll repeat again what I said before. I realize  
11                  that there is a risk here that's been identified  
12                  by Mr. Brongers for going farther afield than  
13                  this witness can testify, but I do want to drill  
14                  down on the words used in this presentation and  
15                  what they mean to this witness so that we have  
16                  clarity on that. And in particular the word  
17                  "regime" and the word "framework." If you could  
18                  help us with that, Mr. Ngo.

19                  A     Perfect. Thank you. So similarly, can you hear  
20                  me and can you see clearly? There's a storm in  
21                  Ottawa. Apologies.

22                  THE COMMISSIONER: Yes. Thank you. We can hear you.

23                  THE WITNESS: Perfect. So, again, without wading  
24                  into the whole -- political decisions about any  
25                  kind of policy options, this, again, to 00 not

1                   to sound too repetitive, I think it's important  
2                   that we look at the entire slide as a whole. As  
3                   you can see the impetus for the working group,  
4                   there are multiple statements that follow what  
5                   that means below the sentence that you actually  
6                   read out.

7                   So the regime represents Canada's anti-money  
8                   laundering and anti-terrorist financing regime  
9                   as we know it, the federal requirements and the  
10                  legislation and regulations. However, the  
11                  framework in Canada is one that includes not  
12                  only federal but also provincial and territorial  
13                  measures that are taking place. So in the  
14                  second bullet you'll see that the Supreme Court  
15                  of Canada's ruling left the regulation of  
16                  lawyers to the province and territories. The  
17                  third bullet states that law societies can play  
18                  an important role in mitigating money laundering  
19                  and terrorist financing risk.

20                 So as part of this initiative of the work  
21                 working group and as part of the mandate what  
22                 we're trying to do is work with the Federation,  
23                 work with law societies to take, you know, a  
24                 pan-Canadian approach and steps to actually  
25                 improve the provincial and territorial

1 requirements that relate to anti-money  
2 laundering/anti-terrorist financing. As it  
3 stands today for law societies those are the  
4 model rules.

5 So in that respect and similarly in echoing  
6 sort of the statements that I've been saying  
7 throughout my presentation or -- not my  
8 presentation, sorry -- my testimony is that the  
9 government here, we're very much focused as part  
10 of this working group to share information, best  
11 practices, and from a Department of Finance  
12 perspective we specifically made recommendations  
13 to strengthen the Federation model rules which  
14 would help strengthen law societies' mitigating  
15 measures, which would then better incorporate  
16 them into the framework.

17 So again just to answer the question that  
18 you asked specifically, what does this mean?  
19 We're trying to help improve Federation model  
20 rules to help mitigate the risks and improve  
21 best practices. And, again, this is why we're  
22 very much focused on bringing those model rules,  
23 aligning them with federal requirements that are  
24 actually being applied across other reporting  
25 entity sectors but also most importantly as well

1                   is aligning them with international standards.

2           Q       Right. I was -- you've helped me, and I think  
3                   that you've clarified your position in general,  
4                   and I thank you for that very much. But I'm  
5                   still -- I'm really drilling down on some  
6                   semantics here, but I think for a proper  
7                   purpose.

8                   So when you speak of the regime, I take it  
9                   that the regime refers to the statutory and  
10                  regulatory legislative framework and that the  
11                  framework -- use of the framework is something  
12                  that is meant to cover something broader,  
13                  perhaps maybe the entirety of the approach to  
14                  money laundering in Canada? Have I got that  
15                  right? I'm just trying to sort of -- because  
16                  the wording in that bullet -- and I know this is  
17                  a relatively minor point in the grand scheme of  
18                  all this, and I don't dispute what you've said  
19                  otherwise, but -- you know, with respect to the  
20                  entire motivation here.

21                  But it speaks to continuing to "work towards  
22                  bringing the legal profession into the  
23                  framework." So therefore it's now outside of  
24                  the framework and that's what I'm confused  
25                  about. What is it outside of, and what is the



1                   But, again, what we're saying here -- and  
2                   it's important to take the slide as a whole --  
3                   is that to bring them into the framework  
4                   means -- and, again, this is what we meant when  
5                   we wrote the slide -- is that it's to align the  
6                   model rules so that the law societies can  
7                   mitigate the money laundering risks in the legal  
8                   profession.

9                   So are they outside the framework? The  
10                  short answer is that -- yes, because they're not  
11                  completely aligned with federal requirements and  
12                  they're not completely aligned with  
13                  international standards. And the regulation of  
14                  the legal profession as it stands, because of  
15                  the Supreme Court of Canada's decision, is  
16                  basically in the hands of the law societies. So  
17                  what we're trying to do is bring them into the  
18                  framework, and this means aligning that -- those  
19                  law society rules with federal and international  
20                  requirements.

21                  Q    I take -- I'll refer now to Ms. Herbst's point  
22                        about what you're here to testify to and what  
23                        you're not -- what both of you are not here to  
24                        testify to. But given your understanding of the  
25                        Supreme Court of Canada's decision, I take it,



1                   then, that it's the Department of Finance's view  
2                   that the alignment you seek to reach is possible  
3                   while remaining compliant with our constitution?

4           A        I am sorry, are you asking me --

5           MR. BRONGERS:  I'm sorry, Mr. Commissioner, I'm going  
6                   to object to this question on the same grounds  
7                   that I objected to Mr. McGowan's question  
8                   earlier that this witness is not here to debate  
9                   government policy or to speak about future  
10                  policy directions, which is a political  
11                  decision.  The witness has now been asked three  
12                  times, first by Mr. McGowan and twice by  
13                  Mr. Westell, to explain what is meant in this  
14                  presentation about the government's approach to  
15                  the working group, and I think the witness has  
16                  tried very hard to answer those questions and  
17                  has provided a full answer.

18                        So I'm just concerned that again Mr. Westell  
19                        is trying to engage in a political debate with  
20                        this witness, and he is not in a position to do  
21                        so as a factual witness before this commission.

22           THE COMMISSIONER:  I think too, Mr. Westell, you're  
23                        really asking this witness for a legal opinion  
24                        on what constitutes constitutional compliance  
25                        and whether or not what is being attempted with

1                   the Federation meets that standard. So I think  
2                   we've exhausted this topic to the extent it can  
3                   be addressed, at least insofar as this witness  
4                   is concerned.

5                   MR. WESTELL: Thank you, Mr. Commissioner. That is  
6                   the totality of my questions for these witnesses  
7                   in this hearing.

8                   THE COMMISSIONER: All right. Thank you. Anything  
9                   arising, Ms. Herbst?

10                  MS. HERBST: No, thank you, Mr. Commissioner.

11                  THE COMMISSIONER: Mr. McGowan?

12                  MR. MCGOWAN: No, thank you.

13                  THE COMMISSIONER: Thank you, Mr. Ngo and  
14                  Mr. Wallace, you are excused from further  
15                  testimony at this point. Thank you.

16                  **(WITNESSES EXCUSED)**

17                  THE COMMISSIONER: And, Mr. McGowan, I gather it will  
18                  be necessary to take a brief adjournment while  
19                  we link up with our next witness; is that  
20                  correct?

21                  MR. MCGOWAN: Yes. I believe if we could take  
22                  five minutes. Unless Madam Registrar tells me  
23                  otherwise, I think that should be sufficient.

24                  THE COMMISSIONER: All right. Five minutes, then.

25                  THE REGISTRAR: This hearing is stood down for

1 five minutes until 11:56 a.m. Thank you.

2 **(PROCEEDINGS ADJOURNED AT 11:51 A.M.)**

3 **(PROCEEDINGS RECONVENED AT 11:56 A.M.)**

4 THE REGISTRAR: Thank you for waiting. The hearing  
5 is now resumed, Mr. Commissioner.

6 THE COMMISSIONER: Thank you, Madam Registrar.

7 Yes, Mr. McGowan. Are we ready to proceed  
8 now.

9 MR. MCGOWAN: We are, Mr. Commissioner. Mr. Isaac  
10 has conduct of the next witness.

11 THE COMMISSIONER: Thank you.

12 MR. ISAAC: Thank you, Mr. Commissioner. The next  
13 witness is Frederica Wilson, the Federation of  
14 Law Societies of Canada. If Madam Registrar  
15 could please attend to affirming the witness.

16 **FREDERICA WILSON, called**  
17 **on behalf of the**  
18 **commission, affirmed.**

19 THE REGISTRAR: Please state your full name and spell  
20 your first name and last name for the record.

21 THE WITNESS: My name is Frederica Wilson. My first  
22 name is spelled F-r-e-d-e-r-i-c-a. My last name  
23 is spelled W-i-l-s-o-n.

24 THE REGISTRAR: Thank you.

25

1                   **EXAMINATION BY MR. ISAAC:**

2                   Q     Ms. Wilson, you are the Executive Director,  
3                             Policy and Public Affairs and Deputy CEO of the  
4                             Federation of Law Societies of Canada; is that  
5                             correct?

6                   A     Yes, it is.

7                   Q     And you joined the Federation in 2007, I  
8                             believe, as the Director Public Affairs. Is  
9                             that accurate?

10                  A     That's correct.

11                  Q     Okay. And you became the Senior Director,  
12                             Regulatory Public Affairs in 2012 before  
13                             becoming the Executive Director and Deputy CEO  
14                             in January of 2018; is that right?

15                  A     Yes, that's correct.

16                  Q     Would you please describe for the Commissioner  
17                             what your current role and responsibilities for  
18                             the Federation involve.

19                  A     My roles are really divided in two for the  
20                             purposes of this hearing, no doubt most relevant  
21                             are my duties as the Executive Director of  
22                             Policy and Public Affairs. I am responsible --  
23                             I lead a team that is responsible for all of the  
24                             public policy work that the Federation does that  
25                             includes matters related to advocacy, national

1 standards, litigation and general policy  
2 matters. Internal policy matters as well.

3 Q Would you please also just briefly describe in  
4 an overview way what the Federation of Law  
5 Societies is, its background, mandate,  
6 membership and governance, please.

7 A Sure. The Federation of Law Societies is a  
8 voluntary organization of the provincial and  
9 territorial regulators of the legal profession.  
10 It's been around for a long time in its current  
11 formation based in Ottawa, et cetera. That  
12 changed in the mid 2000s, I suppose. We have  
13 14 members. That is to say the only the  
14 regulators are members of the Federation. We  
15 exist to do what they ask us to do. They are  
16 ultimately our bosses, I guess one would say.

17 Q And a significant amount of the evidence that  
18 we'll be addressing today and likely tomorrow  
19 will address the model rules that have been  
20 developed by the Federation. Could you describe  
21 again, in sort of overview manner how model  
22 rules are developed by the Federation?

23 A Typically there would be some sort of a working  
24 group or committee that was formed to address an  
25 issue. They would do research, consult with the

1 law societies, consultant with others as  
2 appropriate. Develop drafts, share them  
3 internally within the Federation's governance  
4 structure. We answer to a council which has  
5 representatives of each law society on it and as  
6 well as an executive, and would likely go to a  
7 broader based consultation with the law  
8 societies.

9 Some of law societies in those -- in that  
10 case undertake consultations with their members.  
11 The lawyers they govern provide us with  
12 feedback, the same committee or working group  
13 would review that feedback, produce final  
14 proposed rules which would then go to our  
15 council for approval and then on to the law  
16 societies for approval and implementation.

17 Q And how does the Federation and its member  
18 societies determine when initiatives should be  
19 pursued nationally, sort of coordinated across  
20 the various law societies, and when they may be  
21 pursued independently by individual law  
22 societies? How is that worked out?

23 A The first question would be whether or not the  
24 issue is a matter of national importance.  
25 Whether it is something that engages all or at

1                   least the majority of law societies. The second  
2                   question would be whether the law societies  
3                   are -- believe that there could be greater  
4                   effectiveness in collaborating and working  
5                   together on an issue and whether there would be  
6                   value in national consistency on an issue.

7                   If those criteria are met, then of course  
8                   all of our activities are -- ultimately go  
9                   through our council and are approved by our  
10                  council before they begin.

11                 Q   And are there particular areas where the desire  
12                   for national consistency and to avoid a sort of  
13                   a patchwork approach is more important from the  
14                   Federation's perspective as opposed to other  
15                   areas?

16                 A   Absolutely. We've achieved very considerable  
17                   consistency, for example, in the rules of  
18                   professional conduct. There's obvious reason  
19                   for that.

20                   I should just back up and say that on some  
21                   issues national consistency is driven by the  
22                   fact that there's mobility of members of the  
23                   legal profession across Canada, so having  
24                   consistent rules increases their sort of  
25                   knowability, if I can use a terrible word

1                   really, by members of the profession.

2                   In other cases the matter may be something  
3                   that is of such national importance to us,  
4                   importance to the law society but on a national  
5                   scale, that the decision would be made to work  
6                   together. We've -- sorry go ahead.

7           Q       How does the anti-money laundering feature into  
8                   that assessment? Is that an area where the  
9                   Federation seeks to have a national approach or  
10                  is it something where there's more room for  
11                  individual member law societies to pursue their  
12                  own AML initiatives?

13          A       We think it is critical that there be  
14                  consistency across the country. Certainly if a  
15                  law society wanted to bring in stricter, more  
16                  stringent requirements, that would be less  
17                  problematic than the reverse. But even then we  
18                  think that where a law society determines that  
19                  perhaps a more stringent approach is -- would be  
20                  useful, that is something that we should  
21                  consider and where appropriate adopt on a  
22                  national basis. And for that reason the law  
23                  societies have for more than two decades  
24                  collaborated nationally on anti-money laundering  
25                  matters.



1           Q     I think that brings up an important point I just  
2                     want to highlight. It is the individual law  
3                     societies in each province that ultimately have  
4                     the mandate and responsibility to regulate the  
5                     profession in those respective jurisdiction; is  
6                     that right?

7           A     Yes, that's correct. Each law society in Canada  
8                     is mandated by provincial or territorial statute  
9                     to regulate in the public interest. The  
10                    Federation is not a regulator.

11          Q     Right. And those member law societies are free  
12                     to implement their own rules and initiatives  
13                     either in advance of or possibly beyond those  
14                     that may be implemented by the Federation;  
15                     right?

16          A     They are, of course.

17          Q     Okay. How does the Federation go about  
18                     identifying potential best practices both with  
19                     respect to its various member law societies,  
20                     perhaps internationally. Can you describe that  
21                     process.

22          A     Generally speaking?

23          Q     Yes, please.

24          A     You mean generally speaking? Well, of course it  
25                     starts with research. It's useful to know what

1           the benchmark is. We developed some years ago  
2           national discipline standards, and we started  
3           that work, for example, by looking at matters of  
4           timeliness, communications with the public,  
5           training, et cetera. We looked at what the law  
6           societies were doing, we looked internationally,  
7           we looked nationally at other regulators and  
8           ultimately developed a set of standards. And  
9           that's quite typical of how we would approach  
10          that kind of an issue. So it's based both in  
11          research and in finding out what is actually  
12          being done and understanding what is possible.

13          Q     And turning specifically to the question of  
14          anti-money laundering, are there particular  
15          jurisdictions that the Federation looks to  
16          internationally, particularly with respect to  
17          best practices in that area?

18          A     I think it's common practice for us to look to  
19          other common law jurisdictions, typically.  
20          Although we are also very engaged on the  
21          international scene with international  
22          regulators, generally. So we would look to them  
23          as well. What that means as a practical matter  
24          is that we pay a great deal of attention to  
25          what's done in the United States, what's done in

1 UK, what's done in Australia, for example. But  
2 we will certainly look at other jurisdictions as  
3 well, and we look to international bodies as  
4 appropriate, depending on the subject matter.

5 Q I'd like to turn now to a bit of a high-level  
6 timeline and overview of the principal AML  
7 initiatives of the Federation as well as the  
8 backdrop of the litigation with the federal  
9 government concerning the constitutionality of  
10 its efforts to have the AML regime applied to  
11 the legal profession.

12 And I appreciate that you personally joined  
13 the Federation in 2007, but you are generally  
14 familiar with the AML work and initiatives of  
15 the Federation going back to, say, 2000; is that  
16 fair?

17 A I have been responsible for our work for almost  
18 14 years, so yes, I am familiar.

19 Q Okay. So just beginning in 2001, then. That's  
20 when the federal government first sought to  
21 apply the PCMLTFA, in particular the suspicious  
22 transaction reporting obligations, to the legal  
23 profession; is that right?

24 A That's correct.

25 Q Okay. And that was -- also more or less



1           Q     Okay.  It wasn't in development prior to 2001,  
2                    though, was it?

3           A     I'm not sure.  I can tell you that we had had  
4                    discussions with the federal government about  
5                    the suspicious transaction reporting  
6                    requirements prior to them coming into force,  
7                    and so this was -- had been on our agenda and on  
8                    our radar for some time before 2004.

9           Q     And not to oversimplify, but the model cash  
10                   transaction rule prohibited lawyers and Quebec  
11                   notaries from accepting cash of \$7,500 or more  
12                   in relation to a single client matter; is that  
13                   right?

14          A     That's correct.

15          Q     Okay.  And you mentioned that AML was something  
16                   that may have been on the Federation's agenda,  
17                   at least particularly with respect to this rule.  
18                   Was AML something that you're aware may have  
19                   been on the Federation's agenda prior to 2001?

20          A     Well, it was certainly on the agenda prior to  
21                   the legislation coming into force because we had  
22                   had conversations with the government about it  
23                   coming into force, but I'm not able to tell you  
24                   precisely when.  Having looked at old records, I  
25                   would say it's certainly was on the agenda as

1                   early as the late 1990s, but precisely when, I  
2                   can't answer that question.

3           Q       And can you explain for the Commissioner,  
4                   please, what the underlying AML rationale of the  
5                   model cash transaction rule is, please.

6           A       The purposes of the -- the purpose of the rule  
7                   is to restrict the amount of cash that lawyers  
8                   can accept from clients. The goal of that is to  
9                   mitigate the possibility of criminally minded  
10                  clients trying to place large amounts of cash  
11                  with lawyers for the purposes of laundering  
12                  money or financing terrorism. It was a direct  
13                  response to the suspicious transaction reporting  
14                  requirements, which we -- as we've said, we  
15                  believed and we were in fact found to be correct  
16                  that they were unconstitutional.

17                         And it's a different approach. We took a  
18                         different approach to this by restricting the  
19                         amount of cash that could be -- that lawyers  
20                         could accept. When we refer to it being on a  
21                         client matter, of course it's an aggregate; it  
22                         doesn't matter whether that stretches over --  
23                         you know, the matter stretches over a week or  
24                         four years. If it's a single client matter, the  
25                         total in cash that can be accepted, subject to

1                   certain exceptions in the rule, is \$7,500.

2                   Q     In several Federation memos and other documents  
3                   there's reference to the 2004 cash transaction  
4                   rule as being viewed by the federal government  
5                   at the time as an "appropriate alternative" to  
6                   those reporting requirements. Can you explain  
7                   what is meant by that, by the federal government  
8                   indicating that at the time it was used as an  
9                   appropriate alternative?

10                  A     That statement is primarily referencing  
11                  testimony that then Finance Minister Jim  
12                  Flaherty gave before a senate -- I believe it's  
13                  a senate committee in 2006 where he acknowledged  
14                  that the law societies -- that the Federation  
15                  and the law societies had adopted this model  
16                  rule, and he indicated that this was to address  
17                  the placement of cash into the financial system  
18                  and would replace the large cash reporting  
19                  requirements.

20                  Q     And the 2004 cash transaction rule, I think you  
21                  mentioned it's perhaps inaccurate to call it the  
22                  "no cash" rule. It was subject to several  
23                  exceptions. I mean, first of all, as you'd  
24                  indicated, it would not apply to any cash  
25                  received under the \$7,500 threshold; is that

1 right?

2 A That's right. That threshold was set to be less  
3 than, lower than, the threshold set in the  
4 legislation for large cash transactions, which  
5 was and I believe remains \$10,000. And that's  
6 how we arrived at that figure.

7 Q Okay. Was there any other rationale that you're  
8 aware of for setting that \$7,500 threshold at  
9 that amount?

10 A We had some discussions with representatives of  
11 the Department of Finance. We had started, I  
12 believe, at a \$5,000 -- no, we had started at  
13 the \$10,000 threshold that was in the  
14 legislation. It was suggested to us by  
15 representatives of the Department of Finance  
16 that a lower threshold would be appropriate, and  
17 we agreed and lowered it to \$7,500.

18 Q Okay. And the need or the underlying need for  
19 any sort of threshold, is that something that  
20 was discussed or considered by the Federation at  
21 the time?

22 A I'm not sure I understand your question.

23 Q Sorry. The presence of any exception as opposed  
24 to basically -- I suppose the alternative would  
25 be prohibiting any amount of cash being received



1                   by lawyers. Was that something that was  
2                   considered at the time?

3                   A    I don't know whether it was considered. I would  
4                   say that in 2004 the use of cash in our society  
5                   in general was much higher, was much greater  
6                   than it is today. I don't think that -- I think  
7                   it's highly unlikely, but I can't tell you for  
8                   certain whether we considered prohibiting cash  
9                   completely.

10                  Q    Did the Department of Finance give a reason for  
11                   suggesting or recommending a limit lower than  
12                   \$10,000?

13                  A    I'm not aware.

14                  Q    Okay. There are several other exceptions. The  
15                   cash transaction rule also does not apply, did  
16                   not apply as well at the time, to cash received  
17                   for professional fees, disbursements or  
18                   expenses; correct?

19                  A    That's correct.

20                  Q    What was the rationale for that exception?

21                  A    In fact a number of clients pay their lawyers in  
22                   cash. This is something that I'm sure we'll  
23                   touch on later, but we revisited that question  
24                   when he reviewed the rules leading up to 2018  
25                   amendments. And what we were advised at the

1           time was that it's quite common in rural  
2           communities, for example, and it was, I think, a  
3           sense that it was an appropriate way for lawyers  
4           to get their fees, and we should permit that.

5           Q     And we will sort of unpack some of these rules a  
6           little bit further as well as looking at some of  
7           the consideration that's happened subsequent to  
8           their implementation.  But another sort of area  
9           to which the cash transaction rule does not  
10          apply is that it does not necessarily apply to  
11          funds a lawyer may receive when not providing  
12          legal services, for example, if the lawyer is  
13          acting in a representative capacity as a  
14          fiduciary or potentially as a trustee or under a  
15          power of attorney where they're not necessarily  
16          providing legal advice.  Is that accurate?

17          A     The rule refers to receiving cash.  I don't have  
18          it up in front of me, and I would be more  
19          comfortable answering a question with it in  
20          front of me, but I can't see any quick way to do  
21          that, so you'll just have to bear with me.  I'm  
22          going entirely from memory here.  But the rule  
23          prohibits lawyers from accepting cash in excess  
24          of \$7,5 00 in relation to any single client  
25          matter.  If it relates to a client matter, it's

1                   caught by the rules.

2                   How law societies interpret things like  
3                   acting as a trustee would depend a little bit  
4                   about the context in which the lawyer, I think,  
5                   was acting as a trustee. The same would be true  
6                   of acting in a representative capacity. But to  
7                   the extent that money is going to through a  
8                   trust account of a lawyer, is being deposited  
9                   into a trust account, the annual reports of all  
10                  law societies require lawyers to indicate  
11                  whether they, in any event, took more than  
12                  \$7,500 in cash in, and they have to account for  
13                  why. What were the circumstances? Was there an  
14                  applicable exception.

15                  So I don't believe it's quite as cut and  
16                  dried as you are suggesting, but I don't have  
17                  the rule in front of me.

18                  Q    Okay. Well, we will look at that perhaps a  
19                  little bit further when we examine the rule in a  
20                  little bit more detail. But just perhaps  
21                  returning to the -- sort of the high-level  
22                  timeline, I think the next significant event was  
23                  2006 when the federal government enacted an  
24                  amendment to the AML legislation that exempted  
25                  lawyers from the reporting requirement; is that

1 right?

2 A Yes. I think it's important to understand --  
3 particularly in light of events that have  
4 transpired since, it's important to understand  
5 when we launched the litigation in 2001, we were  
6 successful in very short order in obtaining  
7 interlocutory injunctions prohibiting the  
8 application of the provisions to members of the  
9 legal professions. I won't go into all of the  
10 details about the various court proceedings --  
11 they were numerous -- but that ended up in an  
12 agreement between the Federation and the  
13 Government of Canada that the -- with the  
14 interlocutory injunctions in specific  
15 jurisdictions. And there was agreement that it  
16 would be addressed Canada-wide, and further,  
17 that there would be no other -- no other  
18 regulations would come into force against the --  
19 to be applied to members of the legal profession  
20 without the consent of the parties to the  
21 litigation. We adopted -- sorry.

22 Q No, please go ahead.

23 A We adopted a rule in 2004, and in 2006 the  
24 government introduced and passed amendments to  
25 the legislation. So it's not the Supreme Court

1 of Canada's decision that exempted lawyers from  
2 the suspicious transaction reporting  
3 requirements. It is in fact the early part of  
4 the legal proceedings which were entirely about  
5 suspicious transaction reporting requirements  
6 and an amendment by the federal government of  
7 its own legislation.

8 Q The second model AML-specific rule that was  
9 developed by the Federation was in 2008. And  
10 that was the client identification and  
11 verification model rule; is that right?

12 A Yes.

13 Q Okay. And the backdrop to the development of  
14 that rule was, I believe in 2007 the federal  
15 government had pre-published regulations that it  
16 intended to make the legal profession subject to  
17 very similar CIV regulations under the federal  
18 legislation. Is that right?

19 A Yes, that is accurate. I would add to that that  
20 the Federation on behalf of the law societies  
21 and the federal government, Department of  
22 Finance, and FINTRAC had conversations prior to  
23 the -- those particular regulations coming into  
24 force to consider whether they would be applied  
25 to members of the legal profession, how they --

1                   what other alternatives there might be to that.

2                   So once again something that didn't just -- we

3                   didn't just start on in 2007.

4           Q       Now, those discussions, though, didn't lead, at  
5                   least at that time, to sort of consensus between  
6                   the Federation and the federal government;  
7                   right? The litigation also resumed in late  
8                   2007; is that right?

9           A       That's correct. I think there was general  
10                   agreement about what kinds of rules ought to  
11                   apply but not whose rules they should be. And  
12                   when we refused to consent to the application of  
13                   the regulations to members of the legal  
14                   profession there was an agreement to resume the  
15                   litigation, which had an adjourned sine die.

16          Q       Okay. The 2008 model CIV rules that the  
17                   Federation put in place, those closely tracked  
18                   the federal regulations at the time; is that  
19                   correct?

20          A       That's correct.

21          Q       Okay. And I don't want to oversimplify the CIV  
22                   rules, but they're -- fair to say there are two  
23                   basic components: one is a requirement that  
24                   lawyers identify all clients who retain them to  
25                   provide legal services by recording certain

1           basic information, and the second relates to  
2           further requirements to verify a client's  
3           identity when providing legal services in  
4           connection with financial transactions. Is that  
5           accurate?

6           A    That's correct. The first part of the rule does  
7           not track federal regulations. It goes beyond  
8           what the federal regulations require. The basic  
9           identification requirements apply to all clients  
10          in all circumstances, and in addition to the  
11          obvious names and so on there's, you know,  
12          business addresses and more identifying details.  
13          The client verification parts of the rule track  
14          the federal regulations quite closely.

15          Q    And what was the general underlying AML  
16          rationale of the model CIV rule?

17          A    It's a due diligence rule; right? It's about  
18          knowing your client and understanding who they  
19          are, what the nature of their -- well, first of  
20          all, who they are; are they who they say they  
21          are; what is the nature of their business, if  
22          indeed it involves a business matter, so that  
23          you can be aware of your client's dealings,  
24          which is important for this solicitor/client  
25          relationship but also you can be aware of

1                   whether or not the matter on which you're being  
2                   asked to act is consistent with what you know  
3                   about the client.

4           Q       Right.  And would you agree that the CIV model  
5                   rule in 2008 was developed at least in part in  
6                   response to the federal government's regulations  
7                   that sought to impose very similar requirements  
8                   on members of the profession?

9           A       I think the law societies and the Federation  
10                   from the beginning have taken the position that  
11                   while regulation by the government of the legal  
12                   profession was inappropriate constitutionally.  
13                   That regulating to mitigate the risks of money  
14                   laundering and the financing of terrorism that  
15                   might arise in the practice of law is very much  
16                   in the public interest.  Law societies have a  
17                   duty to regulate the profession in the public  
18                   interest.  And in addition while saying that the  
19                   federal government ought not to regulate  
20                   lawyers, it would have seemed it would have been  
21                   inappropriate for the Federation of Law  
22                   Societies to refuse to do anything about this  
23                   public interest issue.  Law societies embrace  
24                   their responsibility to regulate in this area  
25                   and have done so since 2004.



1           Q     Right.  You'd agree that at least -- not sort of  
2                    taking away from those broader responsibilities,  
3                    but the enactment of that rule was at least in  
4                    part a response to the federal government  
5                    regulations?

6           A     Yes.  I think that's a fair thing to say.

7           Q     Okay.  And was the model -- both the model CIV  
8                    rule and the model cash rule adopted by all  
9                    Federation members?

10          A     Yes.

11          Q     I think after -- following the 2008 CIV model  
12                    rule there was a period of renewed litigation, I  
13                    believe between, more or less, 2010 to 2015.  Is  
14                    that right?

15          A     2009 to 2015, yes.

16          Q     And during that period of renewed litigation,  
17                    was there any engagement between the federal  
18                    government and the Federation on AML issues?

19          A     No.

20          Q     And were there any significant new AML  
21                    initiatives or model rules implemented by the  
22                    Federation during that period?

23          A     No.  Following the adoption of the CIV rules, as  
24                    we call them the, the client identification and  
25                    verification rules, which are complex and were

1           new, we focused our efforts on education and  
2           worked again collaboratively across Canada to  
3           develop comprehensive guidance to lawyers on how  
4           to comply with the rules. That was really the  
5           focus of that period. That and the litigation,  
6           of course.

7           Q    And I appreciate that more recently there has  
8           been a review of the CIV and the cash  
9           transaction rules, but was there any -- there  
10          wasn't any review of the contents of the "no  
11          cash" rule or the CIV rules after they were  
12          implemented in 2004 and 2008, respectively,  
13          prior to the conclusion of the litigation;  
14          right?

15          A    There was an amendment to the client  
16          identification and verification rule within the  
17          first year, I believe, of its adoption. And  
18          after that, no, there was no review of the  
19          content of the rules.

20          Q    Okay. And that takes us up to the 2015 decision  
21          of the Supreme Court of Canada in the Federation  
22          case. And I don't intend to take you through  
23          all of that decision, but in essence the court  
24          upheld the Federation's challenge and found that  
25          the application of the legislation and its

1 regulations to the legal profession breached  
2 sections 7 and 8 of the Charter and undermined a  
3 lawyer's duty of commitment to his or her  
4 clients. Is that accurate?

5 A Yes, that is accurate. I would emphasize again  
6 that what was at issue here were the client  
7 identification and verification regulations  
8 situated within the legislation more broadly.  
9 The court found that the -- as applied to  
10 members of the legal profession, the regulations  
11 and the specific sections of the legislation  
12 which were at issue were unconstitutional. Yes,  
13 they breached section 7 and section 8. They  
14 undermined the duty of commitment to the  
15 client's cause and provided inadequate  
16 protection for solicitor/client privilege.

17 Q Okay. So just pausing at 2015 and appreciating  
18 this was obviously the culmination of almost  
19 14 years of litigation, I'd like to turn to  
20 several developments in the AML landscape at the  
21 time that appear to have raised issues of  
22 significance for the Federation at the  
23 conclusion of that litigation, and some of those  
24 are set out in a memo.

25 MR. ISAAC: If I could ask Madam Hearing Registrar to

1 bring up document FLSC0001, please.

2 Q And if you could let me know, Ms. Wilson, when  
3 you have that document in front of you.

4 A I can see it -- oh, yes. Well, unfortunately  
5 I'm hoping I can see this version. Yes.

6 Excellent. Good.

7 Q What I'm showing you is a memorandum dated  
8 September 14th, 2015, to the council of the  
9 Federation. What is the council of the  
10 Federation?

11 A It's our governing body.

12 Q Okay. And is it comprised of representatives  
13 from all of the member law societies?

14 A Yes. There's a member -- a representative from  
15 each of the 14 law societies and in addition  
16 there is a three-member executive.

17 Q Okay. And that's -- there's a "from" there  
18 which says "Federation executive." Who is  
19 the -- what is the Federation executive?

20 A President, vice president and second vice  
21 president. The past president sits in a  
22 non-voting capacity.

23 Q And if we go down to the body of memo, it says  
24 "Action Required: Discussion By Council." And  
25 then paragraph 1 says:

1                    "There have been a number of developments  
2                    on the anti-money laundering and terrorist  
3                    financing landscape that raise issues of  
4                    potential significance for the Federation  
5                    and the law societies. These developments  
6                    include the Supreme Court's decision  
7                    upholding the Federation's challenge --"

8                    And I'll go on from there. The second item  
9                    that's identified here is:

10                    "... amendments to those regulations, and  
11                    the recent report from the Department of  
12                    Finance on money-laundering and terrorist  
13                    financing risks with its statement that  
14                    the government intends to introduce new  
15                    provisions in the regulations to cover  
16                    lawyers and Quebec notaries. Another  
17                    development is the upcoming review of  
18                    Canada's anti-money laundering and  
19                    terrorist financing measures by the  
20                    international Financial Action Task Force  
21                    (the "FATF"). This memorandum describes  
22                    the developments and discusses the issues  
23                    arising for Council's consideration."

24                    I want to go through and just speak briefly  
25                    about some of these developments that are

1 highlighted here in the memo.

2 If we could go down first, please, you'll  
3 see on the second page there's a heading just  
4 above paragraph 7 that refers to the Canada v.  
5 Federation of Law Societies of Canada decision.  
6 If you go down to the last -- it's paragraph 9  
7 on the next page. The paragraph reads:

8 "The decision of the Court did not  
9 preclude the possibility that the  
10 government could impose obligations on  
11 members of the legal profession that would  
12 be constitutionally compliant and the  
13 government has recently indicated that it  
14 plans to do so."

15 Now, there's two components there that I want to  
16 address with you. The first is the statement  
17 that the court in the Federation case expressly  
18 did not preclude the possibility of the  
19 obligations on members of the legal profession  
20 that might be constitutionally compliant. And  
21 that's accurate; right?

22 A That's correct. They don't provide any detail  
23 as to what might constitute constitutionally  
24 compliant regulations. They do say that.

25 Q The second point is it notes here that the

1 government has recently indicated that it plans  
2 to do so. At this point in September 2015 how  
3 had the federal government indicated to the  
4 Federation, at least, that it intended to do so?

5 A In the -- it's the risk assessment document that  
6 is referred to above. There is a statement in  
7 that document to that effect.

8 Q Okay. Going on, the next heading here is  
9 "Amendments to the Proceeds of Crime (Money  
10 Laundering) and Terrorist Financing  
11 Regulations." You see that? And this portion  
12 of the memo refers to amendments that appear to  
13 have be made in 2015 to the PCMLTFA; is that  
14 right?

15 A Yes. I wonder if I just might ask if we can  
16 zoom -- if Madam Registrar can zoom in slightly.  
17 My reading vision isn't great, and I'm having a  
18 little bit of trouble reading. Thank you very  
19 much.

20 I'm sorry to have interrupted. I'd have to  
21 ask you to repeat the question.

22 Q No, please -- if you don't hear a question or  
23 don't see a document, please don't hesitate to  
24 let us know.

25 So this portion which deals with the

1                   amendments to the legislation, and it seems as  
2                   though the amendments at that time related  
3                   primarily to the CIV requirements. What was the  
4                   significance of the amendments to the  
5                   legislation?

6           A       As I noted earlier and you said in your question  
7                   to me, the CIV rule tracked the Federation  
8                   regulations, you know, quite faithfully, I would  
9                   say, and in the circumstances it seemed  
10                  important to look at what changes the federal  
11                  government had made to those provisions and  
12                  consider whether we ought to be making  
13                  corresponding changes to our own regulations.

14          Q       Okay. And if you look at -- I think that may be  
15                  captured in paragraph 12 of the moment. It  
16                  says:

17                         "Despite the differences between the model  
18                         rules and the regulations, the regulatory  
19                         amendments and other development on the  
20                         anti-money laundering and terrorist  
21                         financing landscape offer an opportunity  
22                         to consider whether amendments to the  
23                         model rules are warranted."

24          A       Yes.

25          Q       Did the Federation, at least at that time,





1                   Assessment of Inherent Risk of Money  
2                   Laundering and Terrorist Financing in  
3                   Canada ... The Report ... discusses risks  
4                   and vulnerabilities for 27 sectors and  
5                   financial products, but as noted in its  
6                   Executive Summary, does not consider the  
7                   mitigating effects of legislative or  
8                   regulatory measures aimed at preventing  
9                   money laundering and terrorist financing."

10                  Now, we're going to look at that report, sort of  
11                  its key findings with respect to the legal  
12                  profession. And I just want to unpack that last  
13                  part of the comment.

14                         It's correct that the inherent risk  
15                         assessment, as its name suggests, was an  
16                         assessment of inherent risks only before any  
17                         mitigating measures were taken into account? Is  
18                         that your understanding as well?

19                  A     Yes, it says so in the document itself. I don't  
20                         mean in our memo. It says it -- that very  
21                         reference -- that very reference to "does not  
22                         consider any mitigating effects," et cetera,  
23                         comes, paraphrased of course, from the federal  
24                         government's Department of Finance risk  
25                         assessment document that is referenced in the

1 beginning of the paragraph.

2 Q So with that, you know, backdrop of  
3 understanding that this was an assessment of  
4 inherent risk, I note in paragraph 16 the memo  
5 summarizes, it says that:

6 "Legal professionals received a 'high  
7 vulnerability rating' in the assessment of  
8 inherent vulnerability, and were found to  
9 be at high to very high risk of exposure  
10 to scenarios with a risk of money  
11 laundering [involved] due to the nature of  
12 the services they provide."

13 And there's also a noting in particular of  
14 mortgage fraud and real estate transactions as  
15 well as some other areas.

16 Does the Federation generally agree with the  
17 Department of Finance's assessment that as a  
18 matter of inherent risk, at least, lawyers are  
19 exposed to a high risk of money laundering?

20 A I think it's obvious that the nature of legal  
21 practice, all of the various things that lawyers  
22 do, assisting in real estate transactions,  
23 assisting in incorporations, assisting in all  
24 kinds of transactions, mergers and acquisitions,  
25 et cetera, et cetera, et cetera, means that

1                   there is a possibility that -- as I -- to use  
2                   the term I used earlier, the criminally minded  
3                   in the public might seek to launder money  
4                   through those types of services, through those  
5                   types of things. The purchase of real estate,  
6                   the acquisition of businesses, et cetera. And  
7                   that in that sense yes, members of the legal  
8                   profession are exposed to those risks.

9                   Q    Is there -- again from your and the Federation's  
10                   perspective, is there anything unique about  
11                   lawyers in their terms of the attraction to -- I  
12                   think you'd referred to them as the criminally  
13                   minding. Are there aspects of either the  
14                   privilege that they have or other assumptions  
15                   that may be made when a lawyer is involved in a  
16                   transaction or other service that make them  
17                   particularly attractive to the criminally  
18                   minded?

19                   A    Well, certainly many people say that the fact  
20                   that the communications between lawyers and  
21                   their clients are privileged. And I want to  
22                   stress here that it's not lawyer's privilege.  
23                   It doesn't belong to the lawyers, it's not  
24                   theirs, it's not there to benefit lawyers and  
25                   it's not theirs to waive. It's belongs to

1 clients. That the -- that solicitor/client  
2 privilege may provide -- may be seen to provide  
3 some protection for communications between those  
4 who are seeking to do something that is against  
5 the law, that certainly is -- there certainly  
6 are -- that is a frequently cited concern, I  
7 would say.

8 Q You say that those are frequently cited  
9 concerns. Are they concerns that you and the  
10 Federation agree with, that they are present,  
11 that the possibility of at least the presumption  
12 of privilege or the appearance of legitimacy are  
13 factors that may make lawyers attractive to the  
14 criminally minded?

15 A I'm not going to -- I'm not in a position to  
16 dispute it, but nor am I somebody who is an  
17 expert in sort of rationale for criminals and  
18 what they choose to do. It is a fact that the  
19 communications between lawyers and their clients  
20 are protected by privilege. There are all kinds  
21 of good reasons for that and having -- those  
22 reasons being recognized by our Supreme Court of  
23 Canada. I'm not going to dispute that that  
24 makes it attractive. I'm just not in a position  
25 to really offer an opinion because it's beyond



1                   apply to the legal profession are  
2                   effectively inoperative as a result of  
3                   decisions and related injunctions.  
4                   Following a February 13, 2015 Supreme  
5                   Court of Canada ruling, the Government  
6                   of Canada is revisiting these  
7                   provisions and intends to bring  
8                   forward new provisions for the legal  
9                   profession that would be  
10                  constitutionally compliant."

11                 Now, is that -- that's the footnote I think you  
12                 were referring to as where the Federation was  
13                 getting the indication that the federal  
14                 government might be intending to bring forward  
15                 new legislation. Is that accurate?

16                 A     Yes.

17                 Q     Why was this noted in the memo as perhaps -- I  
18                 think the term is perhaps the most significant  
19                 aspect of the inherent risk assessment for the  
20                 Federation at this time?

21                 A     I don't think it will come as any surprise that  
22                 our position on the constitutionality of  
23                 attempts to regulate the profession, the legal  
24                 profession in this area has not changed. And in  
25                 the event that the government did bring in more

1 regulations, there's a reasonable likelihood  
2 that we would end up back in litigation. That  
3 in and of itself is -- it would be significant  
4 and would have a significant impact on us as an  
5 organization and our members, the law societies  
6 themselves.

7 Q The next heading in this memo is -- and this was  
8 the other sort of development of significance  
9 was the FATF mutual evaluation of Canada, and  
10 that appears -- that portion appears just above  
11 paragraph 20. And the memo notes at  
12 paragraph 22:

13 "The next mutual evaluation of Canada is  
14 schedule for October and November of this  
15 year, with the findings likely to be  
16 released in 2016. It is expected that the  
17 government will be motivated to  
18 demonstrate compliance with the FATF  
19 standards wherever possible. It is  
20 important to understand the government's  
21 announced intention to once again try to  
22 bring legal counsel within the scope of  
23 the Act in this international context."

24 Now, I want to return -- I want to turn to the  
25 Federation's participation in that mutual



1 evaluation process momentarily. But before we  
2 do, I just want to look at the summary of the  
3 issues and in particular paragraph 23 and  
4 paragraph 24 of the memo. So it states:

5 "The changes to the anti-money laundering  
6 and terrorist financing landscape outlined  
7 in this memorandum raise a number of  
8 issues for Council's consideration  
9 including some related to the model rules  
10 and others related to the government's  
11 apparent intention to introduce new  
12 legislative measures for legal counsel."

13 Paragraph 24 says:

14 "As already noted, the no-cash and client  
15 identification and verification rules have  
16 not been reviewed since their adoption.  
17 In light of the actual and proposed  
18 amendments the federal regulations and the  
19 specter of new federal provisions for  
20 members of the legal profession, a  
21 comprehensive review may be advisable.  
22 The government's amended regulations and  
23 its risk assessment report could inform a  
24 review as could guidance from the FATF and  
25 the experience of the law societies in

1 enforcing the rules."

2 And then it goes on at paragraph 25 to say:

3 "The prospect of new federal legislation  
4 to bring the legal profession within the  
5 scope of the government's anti-money  
6 laundering and terrorist financing regime  
7 suggests the need to develop a  
8 comprehensive strategy in response. Such  
9 a strategy would need to include policy,  
10 government relations, communications and  
11 stakeholder engagement issues."

12 I think you said earlier, Ms. Wilson, that this  
13 was the beginning of a conversation prompted by  
14 this. But would it be fair to say that at this  
15 point the memo, what it describes is the  
16 potential or spectre of new federal legislation  
17 has been identified as one of the reasons to  
18 develop a comprehensive strategy, including a  
19 comprehensive review of the Federation's AML  
20 rules. Is that -- that's fair?

21 A It was one of the reasons. It was one of the  
22 reasons, but I think you also have to look at  
23 the rest of the memo which makes the point that  
24 the rules had not been reviewed. It's good  
25 regulatory practice to review regulations on a

1                   periodic basis. We were, I think not too  
2                   surprisingly, consumed by the matters related to  
3                   the litigation for most of the period between  
4                   the adoption of the last model -- then last  
5                   model rules, the CIV rule and the -- and events  
6                   we're describing in this memorandum.

7                   I also think it's fair to say that in the  
8                   earlier days in dealing with anti-money  
9                   laundering matters there was less understanding  
10                  probably at that -- in the early days of what  
11                  role the law societies could play as public  
12                  interest regulators, the significance of money  
13                  laundering threats in the context of legal  
14                  practise in the sense of the significance of  
15                  money laundering is not a victimless crime; it's  
16                  bad for people, it's bad for the economy and the  
17                  Canadian public.

18                  So I think we were beginning to see also the  
19                  evolution from a rather more -- a response  
20                  focused only on rules and a -- broader rules and  
21                  litigation and a broader more comprehensive  
22                  approach to dealing with matters related to  
23                  money laundering and the risks that might arise  
24                  in the practice of law. And that -- this is the  
25                  beginning of that.

1           Q     When this memo was written in September 2015, I  
2                    think it notes the mutual evaluation process was  
3                    just on the horizon, scheduled to begin in  
4                    October and November, and obviously this memo  
5                    was in September. Did the Federation  
6                    participate in the FATF evaluation process?

7           A     We did.

8           Q     How -- what was the nature of its participation?

9           A     We had -- we -- Jonathan Herman, who is our CEO,  
10                   and I attended a meeting with the FATF  
11                   assessors, a single meeting. We went prepared  
12                   to describe the approach to regulation that the  
13                   Federation of Law Societies had adopted. We  
14                   talked in fairly high-level terms about the  
15                   tools that were being used by law societies to  
16                   assess compliance with and to enforce compliance  
17                   with the rules. We talked about the -- in broad  
18                   terms the sort of constitutional context here in  
19                   Canada. It was -- I don't recall exactly how  
20                   long the meeting was, but it was certainly less  
21                   than a half a day. It was a matter of an hour  
22                   or two.

23          Q     Did individual member law societies participate  
24                   in the mutual evaluation process as well?

25          A     Initially the Department of Finance had, which I

1           guess -- my understanding of how these reviews  
2           works is that the appropriate authority and the  
3           member country, by which I mean a member of the  
4           FATF, identifies stakeholders with whom the  
5           assessors might meet, and the Department of  
6           Finance had identified the Law Society of  
7           British Columbia. However, given our national  
8           approach to this issue and the fact that the --  
9           you know, it's an issue -- we have a national  
10          approach because it is an initiative that  
11          affects all of the country and each of the law  
12          societies, we were asked at the Federation to  
13          participate in the evaluation in the place of  
14          the Law Society of British Columbia. In  
15          part by -- the Law Society of British Columbia  
16          itself asked that the Federation be the  
17          representative.

18          MR. ISAAC: Madam Hearing Officer, if you could bring  
19          up document LSB009258-1. If you could let me  
20          know, Ms. Wilson, when you see that document.

21          Q     Do you have that in front of you now?

22          A     Yep.

23          Q     Okay.

24          A     Sorry, I was reading it.

25          Q     There's -- this is an email chain between

1                   yourself, Ms. Armour from the Law Society of  
2                   British Columbia and Ms. Buchanan as well and  
3                   Michael Lucas in November 2015. And the bottom  
4                   states from Mr. Lucas to yourself:

5                   "Hi Frederica. I thought I'd touch base  
6                   because I'm not at all sure what's  
7                   happening, or what we should be doing (if  
8                   anything) concerning this FATF assessment  
9                   upcoming in a little over a week. Was  
10                  there going to be call of CEOs? I briefed  
11                  Tim about this a bit while we were  
12                  together at the Justice Summit this week,  
13                  but he checked his diary and he couldn't  
14                  find anything on it. If we're going ahead  
15                  with it, we probably need to start  
16                  identifying who will attend and what we're  
17                  going to say."

18                  Just pausing there. Did you understand that the  
19                  FATF had reached out and contacted the Law  
20                  Society of British Columbia about possibly  
21                  engaging in the mutual evaluation process at  
22                  that time?

23                  A    My recollection is that the law society had been  
24                  identified by the Department of Finance. I  
25                  don't have a specific recollection as to whom

1 had reached out to whom.

2 Q Okay. And then the next part of the email is a  
3 response from Ms. Armour back to yourself and  
4 Mr. Lucas. And Ms. Armour writes:

5 "I think the plan was to find out where  
6 LSUC --"

7 I think that's the Law Society of Upper Canada;  
8 is that right?

9 A As it was then called, yes.

10 Q Yeah.

11 "-- is in monitoring and enforcement of ID  
12 and verification. If they are in better  
13 shape than LSBC (likely) we were going to  
14 try to substitute them."

15 And then it says:

16 "Are we waiting to hear become from [the  
17 Law Society of Upper Canada]?"

18 I'm appreciating this isn't an email that you  
19 sent, but are you able to shed any light on the  
20 context for this or what the reference to  
21 substituting law societies in as part of the  
22 mutual evaluation process may have referred to?

23 A I'm really not. I'm guessing from the message.  
24 I have no specific recollection of this, but I'm  
25 guessing from the message that there was a

1                   consideration of what organization would be best  
2                   placed to meet with the FATF.

3                   I can tell you that in advance of the  
4                   meeting what we did was to review the  
5                   enforcement powers and approaches of all of the  
6                   law societies so that we were able to provide  
7                   that information rather than focusing on a  
8                   single law society.

9                   Q    And what did that review indicate in terms of  
10                   the -- well, what did that review indicate that  
11                   preceded that participation in the mutual  
12                   evaluation process?

13                  A    Well, I want to be clear it's not a situation  
14                   where, you know, we had a long lead-in period  
15                   and asked for, you know, comprehensive  
16                   statistics, et cetera, from every law society.  
17                   We looked at the powers that law societies have  
18                   and what they -- how they exercise them in  
19                   general terms. I'm not sure that I remember  
20                   with much -- you know, much more specificity  
21                   than that.

22                  Q    Okay.

23                  A    That was assumptions of what we presented to the  
24                   FATF.

25                  Q    Okay. And would it be fair to say in presenting



1 information to the FATF there was an effort, at  
2 least, to sort of put the best foot forward and  
3 make sure that the most robust programs are  
4 being presented before the evaluators?

5 A We didn't get into the kinds of details about  
6 individual law societies, so no, I don't think  
7 that's the case. I think it is evident here  
8 that the law -- from this message that the Law  
9 Society of British Columbia may have had some  
10 concerns, but I'm just guessing from what the  
11 text of the message is that Deb Armour wrote.  
12 But it wasn't a case where we focused on an  
13 individual law society in our presentation to  
14 the FAFT. We talked at a higher level about  
15 what all of the law societies can do.

16 It's our position that it's important --  
17 that that is important. That the experience of  
18 a single law society, it can be interesting, of  
19 course, and relevant, but it's not sufficient.

20 Q In terms of the assessment that you referred to,  
21 the Federation undertaking in advance of this  
22 mutual evaluation, did that indicate a  
23 consistency in the way in which the model rules  
24 had been implemented and were being enforced in  
25 each of the jurisdictions?

1           A     The implementation is consistent across the  
2                   country.  There may have been minor variations  
3                   but nothing of substance.  You know, law  
4                   societies are made up of lawyers and lawyers  
5                   often think that they can arrange the words a  
6                   little bit differently and bit better, or it may  
7                   be a matter of the style.  These rules, although  
8                   developed as model rules, are implemented in law  
9                   societies in the context of a broader set of  
10                  rules and they fit within that, so in some cases  
11                  there were minor, you know, sort of editing  
12                  changes to fit the law society's style but  
13                  nothing of substance.  No differences of any  
14                  substance.

15                         In terms of what we able to ascertain about  
16                         what law societies do to enforce them, yes, it's  
17                         a variety of things.  It starts with  
18                         self-reporting through the annual reports which  
19                         law societies have to indicate -- sorry, members  
20                         of law societies have to answer a whole variety  
21                         of questions and those reports vary from law  
22                         society to law society.  But I believe it was  
23                         the case that all law societies had a question  
24                         about the compliance with the cash transactions  
25                         rule.

1                   The -- we also looked at the their broad  
2                   powers to audit and whether or not they were  
3                   exercised, but not in detail. We certainly  
4                   weren't drilling down to the number of annual  
5                   audits that are conducted or anything of that  
6                   sort.

7                   One of the challenges in terms of getting  
8                   information on enforcement and it remains a  
9                   challenge today and something that we're quite  
10                  focused on at the moment is that these rules  
11                  find their expression in law society rules in  
12                  different ways. Some of them are part of the  
13                  accounting rules. Some are part of the general  
14                  rules and regulations of law society. And how a  
15                  particular matter is referred for investigation  
16                  or how it's referred to prosecution does not  
17                  necessarily reference anything to do with  
18                  anti-money laundering rules.

19                  So you may find, for example, that somebody  
20                  is cited for a breach of the trust accounting  
21                  rules. It doesn't tell you, without digging  
22                  further, exactly what was behind it. That's  
23                  something that existed at the time of this  
24                  evaluation, something that we are still working  
25                  within the law -- with the law societies to get

1           to a place where we can produce more specific  
2           data that looks more specifically at these -- at  
3           this suite of rules that are relevant to the  
4           anti-money laundering efforts.

5           Q     Okay. I'd like to turn to look at the  
6           participation as part of the mutual evaluation  
7           process in a little bit more detail.

8           MR. ISAAC: For that, Madam Hearing, Registrar, if  
9           you could bring up LSB004161, please.

10          Q     So this is a December 3rd, 2015 memo, again from  
11          the Federation executive to the council of the  
12          Federation. Action required is again  
13          "discussion by council." The issue identified  
14          here is:

15                 "The implications of developments on the  
16                 anti-money laundering and terrorist  
17                 financing landscape and how the Federation  
18                 might respond to these developments."

19          And then paragraph 1 is a list of the  
20          developments in the landscape that raise issues  
21          of potential significance for the Federation of  
22          Law Societies. The first three are reference to  
23          the developments that we've -- we already  
24          discussed. The fourth is a recently  
25          conducted -- well, the recently conducted

1 review.

2 And there's a -- the next page of the memo  
3 provides an update on the FATF assessment.  
4 That's on page 2 starting at paragraph 3, if you  
5 can look at that, please.

6 A I wonder if we could just zoom on it a little  
7 bit, please.

8 Q Okay. I'm looking at paragraph 4 right now,  
9 Ms. Wilson. It says:

10 "In advance of the assessment, conducted  
11 from November 3-20, 2015, the Department  
12 of Finance identified organizations and  
13 other stakeholders with which the  
14 assessors met privately. Shortly before  
15 the assessment period, we learned that the  
16 Law Society of British Columbia had been  
17 invited to meet with the assessors to  
18 provide information in relation to the  
19 legal profession. In light of the  
20 national dimension of this issue, the LSBC  
21 suggested that the assessors speak to  
22 representatives of the Federation."

23 And:

24 "At the request of the Executive,  
25 Federation CEO Jonathan Herman, and Senior

1                   Director, Regulatory and Public Affairs,  
2                   Frederica Wilson, met with the assessor on  
3                   November 18, 2015."

4                   It mentions that:

5                   "Past president Thomas Conway was to have  
6                   led the Federation in this meeting, but an  
7                   urgent client matter prevented him from  
8                   attending."

9                   Then it goes on in paragraph 5 to say:

10                  "The Federation representatives provided  
11                  the assessors with information on the law  
12                  society rules and regulations in place  
13                  across Canada. Using the material put  
14                  before the courts in the Federation's case  
15                  against the federal government, they also  
16                  gave a general outline of the range of  
17                  methods used by law societies to monitor  
18                  compliance by members of the legal  
19                  profession. The FATF assessors asked a  
20                  number of questions about enforcement,  
21                  including whether law societies take  
22                  account of the relative risks that may be  
23                  posed in different contexts. The  
24                  assessors also inquired about statistics  
25                  on enforcement, prosecutions and



1                   scheme in Canada contains gaps in the  
2                   oversight of lawyers, specifically when  
3                   members of the legal profession are doing  
4                   work other than traditional legal work.  
5                   They were also interested in more detailed  
6                   information on enforcement of the existing  
7                   rules and regulations."

8                   Again, just pausing there. What is the  
9                   reference there to "when members of the legal  
10                  profession are doing work other than traditional  
11                  legal work"? Do you recall what that -- what  
12                  that's a reference to?

13                A    I'm sorry, I don't. I mean, I can try to look,  
14                   but I don't know what records would exist from  
15                   this meeting. But I don't know what that  
16                   reference is.

17                Q    Do you know what -- I mean, is there, at least  
18                   in your mind, a distinction between traditional  
19                   legal work and non-traditional legal work?

20                A    I don't know what it is. I mean, certainly I  
21                   suppose that there are things that lawyers do a  
22                   lot of and then there may be things that lawyers  
23                   do only a little of, but it's referring here to  
24                   legal work, so I'm assuming that it is work that  
25                   we would consider to be the practice of law.





1 non-traditional legal work, but I am aware that  
2 it is a category of work that's discussed in the  
3 risk assessment.

4 Q Okay. Do you recall any other specific concerns  
5 or areas that were identified by the evaluators  
6 in that meeting?

7 A Other than what's identified here?

8 Q Yes.

9 A Well, I have a recollection of a concern about  
10 the fact that because the law societies are  
11 provincially and territorially regulated and  
12 that there's one -- two in Quebec, that there is  
13 a potential for inconsistency in the  
14 regulations. In fact the regulations are  
15 consistent but -- and still remain consistent,  
16 but inconsistency in the regulations themselves  
17 and in their enforcement, I do recall that  
18 concern being expressed by the assessors.

19 Q And if we go on in the same memo, if you go to  
20 page 3, please, there is a portion that says  
21 "responding to new regulations."

22 A M'mm-hmm.

23 Q And the first -- paragraph 8 provides a summary  
24 of the Federation decision. And then  
25 paragraph 9 repeats something we had seen in one

1 of the earlier memos, which was:

2 "The prospect of new federal legislation  
3 to bring the legal profession within the  
4 scope of the government's [AML] and  
5 terrorist financing regime suggests a  
6 pressing need to develop a comprehensive  
7 strategy in response."

8 And that's a similar statement that we saw in  
9 the previous memo.

10 If we go down to paragraph 16, please, which  
11 is on page 4. Sorry, I'm going to start with  
12 paragraph 15. This is a discussion here under  
13 the heading of "Strategic Priority and Timing"  
14 of "Addressing the Issues." Paragraph 15 says:

15 Other factors may, however, argue in  
16 favour of deciding to address the  
17 anti-money laundering issues now. As  
18 noted above, the FATF mutual evaluation of  
19 Canada is currently under way. Proceeding  
20 now to review the model rules, gather  
21 information on their enforcement, and  
22 consider whether changes should be made to  
23 strengthen the anti-money laundering  
24 regime put in place by the law societies  
25 might afford an opportunity to address

1                   some of the apparent concerns of the  
2                   assessors. This might improve the  
3                   assessment as it pertains to the legal  
4                   profession and, while perhaps not  
5                   sufficient to dissuade the government from  
6                   introducing new legislation or regulations  
7                   affecting the legal profession, would also  
8                   portray the law societies own anti-money  
9                   laundering regime in the best possible  
10                  light."

11                 And paragraph 16 goes on to say:

12                   "The threat of new government legislative  
13                   action is another reason to consider  
14                   tackling these issues now rather than  
15                   waiting the outcome of the governance  
16                   review and future strategic planning."

17                 And then it goes -- if you track down in that  
18                 same paragraph, the last sentence says:

19                   "There is a risk that the government's  
20                   policy rationale for introducing new  
21                   legislation will be strengthened by the  
22                   absence of a national, coordinated  
23                   approach by the law societies,  
24                   particularly on the enforcement and  
25                   demonstrable effectiveness of the law

1                   societies' anti-money laundering rules."  
2                   So just pausing. You would agree -- and I  
3                   think, you know, you had acknowledged that it  
4                   was a factor in previous action taken by the  
5                   Federation, the prospect or the spectre of  
6                   legislation. But here this memo is very clearly  
7                   saying that the need, the pressing need to  
8                   address the potential -- the prospect of new  
9                   federal legislation as well as the potential  
10                  policy rationale underlying such legislation,  
11                  that those are significant considerations that  
12                  are giving rise to the pressing need for the  
13                  Federation to tackle and to be seen to tackle  
14                  the anti-money laundering issues in a national  
15                  and coordinated manner. Is that accurate? Is  
16                  that fair?

17                  A    That's accurate. They were not -- as the memo  
18                      itself illustrates they were not the only  
19                      considerations. I think it's important to  
20                      understand what this is about. You know, you  
21                      may be tempted to conclude that that meant that  
22                      all of this is purely strategic, and if the  
23                      government left us alone we wouldn't care a wit  
24                      about regulating to address the risks of money  
25                      laundering. I don't think the facts bear that

1 out.

2 It is the case, however, that we have wanted  
3 and prior to these events had expressed on more  
4 than one occasion to the Department of Justice  
5 with whom we meet annually -- we meet with  
6 senior officials of the Department of Justice  
7 annually -- the desire to sit down and talk to  
8 the government about our shared interest in  
9 regulating to address anti-money laundering  
10 risk. We didn't think it was appropriate to  
11 have those conversations while we were still  
12 engaged in litigation. So the first time that  
13 came back onto our agenda with the Department of  
14 Justice was in the meeting that followed the  
15 release of the Supreme Court of Canada's  
16 decision.

17 So we have always thought that it is  
18 important that we persuade the government that  
19 we are doing a good job. We want them to  
20 believe in what we are doing. We want them to  
21 believe that what we do is effective and that we  
22 can -- we recognize that part of getting there  
23 is to demonstrate that it's effective. You  
24 know, we're quite a small organization, and so  
25 to have undertaken major -- a lot of this major

1 work which has consumed a very large amount, not  
2 only of my time but of -- the time of  
3 representatives of each of the law societies  
4 while we were also engaged in litigation was  
5 probably not realistic.

6 But following the litigation with the FATF's  
7 mutual evaluation reports, with the risk  
8 assessment, it was very clear that we had a lot  
9 of work to do persuade the government that our  
10 regulations were both appropriate -- or not  
11 both -- were appropriate, effective and that  
12 they fill any perceived gap in the regulatory  
13 landscape in Canada. That is very important  
14 obviously to the government in terms of its  
15 international partners, and we recognized at the  
16 time that we were having this internal  
17 conversation that we had a long way to go.

18 Is there some part of it that is strategic?  
19 Of course. Of course there is. But it's  
20 certainly not the case that it was purely  
21 strategic and I think the evidence is in what we  
22 have gone on to do over the last five years.

23 Q The memo, and as you sort of described the  
24 conversation developing over time, there are  
25 some potential action items that are referred

1 to, at least in preliminary form, in this memo.  
2 If you go to paragraph 21, please. And this  
3 paragraph refers to -- it says:

4 "With the FATF assessment under way now,  
5 there may be merit in moving quickly to  
6 consider matters related to the  
7 effectiveness and enforcement of the  
8 existing law society anti-money laundering  
9 rules and regulations. A committee or  
10 other body with a narrower mandate  
11 comprised of people with specialized  
12 expertise may be the most effective  
13 process --"

14 And then it goes on also to discussing:

15 "Another option would be to establish a  
16 single task force or special committee..."

17 Do you see that? This memo is in  
18 September 2016. It was shortly after that that  
19 the Federation formed its AML/terrorist  
20 financing working group; is that right?

21 A That's correct.

22 Q Okay. And we're going to turn to the mandate  
23 and the initiatives that have been undertaken by  
24 that working group in a moment, but that -- was  
25 that sort of the where all of this discussion



1                   that we've looked at in terms of the development  
2                   of -- in the AML landscape that's been  
3                   identified in these memos, that is where it  
4                   found its sort of primary focal point was in the  
5                   formation and then the work that was conducted  
6                   by the AML/terrorist financing working group.  
7                   Is that right?

8                   A     Yes, that's correct.

9                   Q     Okay.  So I'd like to look just briefly at the  
10                  mutual evaluation report, although thankfully  
11                  there's a helpful summary that the Federation  
12                  has done in a memo, so we likely won't need to  
13                  look at the source document itself.

14                 MR. ISAAC:  But, Madam Hearing Registrar, if you  
15                  could bring you have FLSC000002.

16                 Q     And this is -- if you're looking at the same  
17                  document, this is a memo from yourself to  
18                  Mr. Herman, who's the CEO, dated September 21st,  
19                  2016.  And the subject is "FATF mutual  
20                  evaluation report."  You see that?  It's a  
21                  three-page memo.

22                 A     M'mm-hmm.

23                 Q     So this memo summarizes -- you'll see the  
24                  intention here is to summarize the key findings  
25                  of the mutual evaluation report.  And there's a

1 heading there that says "Key Findings." And --  
2 key findings, at least, with respect to the  
3 legal profession. So the paragraph 4 says:

4 "The report concludes that Canada 'has  
5 made significant progress 'in meeting the  
6 FATF standard since its last mutual  
7 evaluation (in 2007). The evaluators  
8 concluded, however, that the fact that  
9 lawyers and Quebec notaries are not  
10 covered by the federal regulatory scheme  
11 is a 'significant concern ' considering  
12 the 'high risk rating ' of the sector."

13 And Then it goes on to describe some specific  
14 findings in the evaluation report.

15 "The evaluators found that the  
16 February 2015 decision of the Supreme  
17 Court of Canada holding that the federal  
18 regulations were unconstitutional as  
19 applied to legal counsel creates a  
20 'significant impediment to Canada's  
21 ability to combat [money laundering] in  
22 particular in high-risk sectors such as  
23 real-estate transactions and the formation  
24 of corporations and trusts.'

25 The report suggests that in the

1 absence of federal regulatory authority  
2 over legal counsel there is 'no incentive  
3 for the profession to apply AML/CFT  
4 measures and participate in the detection  
5 of potential [money laundering/terrorist  
6 finances].'

7 Although aware of the No-Cash and  
8 Client Identification and Verification  
9 rules developed by the Federation and  
10 implemented by every law society in  
11 Canada, the evaluators were dismissive of  
12 their effectiveness describing as  
13 'over-confident' the suggestion that these  
14 rules mitigate the risks of legal counsel  
15 becoming involved in money-laundering or  
16 terrorist financing activities. The  
17 report also questioned the enforcement of  
18 the rules, noting 'while monitoring  
19 measures are applied by the provincial and  
20 territorial law societies, they are  
21 limited in scope and vary from one  
22 province to the other.'"

23 Then finally:

24 "The evaluation report was also critical  
25 of Canada's regulation of risk associated

1                   with nominee shareholder arrangements --"

2                   So just pausing there. Did the Federation view

3                   the findings in the mutual evaluation report as

4                   fair and accurate at the time?

5           A       No, but they weren't a surprise.

6           Q       Okay.

7           A       No. We --

8           Q       Could you unpack that a little bit.

9           A       Pardon me?

10          Q       I said can you explain a little bit. What was

11               the -- you know, in terms of the specific --

12               I've obviously read a large block. I wanted to

13               give it to you all at once. But were there

14               particular aspects of the mutual evaluation

15               report's findings with respect to the legal

16               profession that the Federation viewed as

17               inaccurate or unfair or incomplete?

18          A       Yes. I think the mutual evaluation report

19               displays a lack of understanding about the role

20               of the legal regulators in Canada. They are

21               serious public interest regulators. They have

22               comprehensive mandates and very extensive

23               powers. They are -- have shown no reluctance to

24               use those powers and no inclination to shy away

25               from appropriate regulation in any area. But to

1           be blunt, the assessors were not interesting in  
2           hearing that, and that is indicate here. Their  
3           position and for a very long time the position  
4           of the Government of Canada has been that if  
5           it's not in government legislation, that it's  
6           irrelevant. And we take exception to that.

7                     Law society regulations have the force of  
8           law as applied to members of the legal  
9           profession and the regulations that law  
10          societies are, I think, trying to do -- trying  
11          to -- have adopted and are trying to ensure that  
12          the regulations stay current to address very  
13          real risks and that they accept responsibility  
14          for regulating. So that's the first thing that  
15          I would say is inaccurate.

16                    The second thing is that the suggestion at  
17          paragraph six in this memo, the suggestion in  
18          the report that is set out at paragraph 6 that  
19          there's no incentive for the profession to apply  
20          AML or counterterrorist financing regulations or  
21          to participate in the detection of potential  
22          money laundering simply, again, ignored the fact  
23          that we were doing this very thing. That we  
24          were in fact -- we have regulations, that we had  
25          regulations since 2004, that we brought in new

1 regulations when the client identification and  
2 verification matters came into legislation -- or  
3 into regulations.

4 So in that respect it certainly was not  
5 accurate. Is it their view? I think it is  
6 their view. I think that's quite clear. I  
7 think they have taken the position that if it's  
8 not in government regulation, it doesn't matter.  
9 But I don't think that that in fact creates an  
10 accurate portrait of what is happening in Canada  
11 or was happening at the time of the assessment.

12 Q Thank you. And if we go down to paragraph 11.  
13 Sorry, I should --

14 A Can I just say one thing with regard to  
15 paragraph 7? I'm sorry. Just as you were  
16 scrolling it caught my eye. And the quote at  
17 the end that refers to there being:

18 "While monitoring measures are applied by  
19 the provincial and territorial law  
20 societies, they are limited in scope and  
21 vary from one province to the other."

22 I think it's worth noting and I believe it's  
23 quite clear that the powers that law societies  
24 have, they are extensive. They have a capacity  
25 to go into law firms and look at everything they



1 attempt to bring in constitutionally  
2 compliant regulations to cover lawyers and  
3 Quebec notaries is not known."

4 Then it says:

5 "During a meeting between members of the  
6 Federation Executive and officials of the  
7 Department of Justice in June 2016,  
8 however, government representatives  
9 expressed concern about enforcement of the  
10 law society rules. The negative report  
11 may elevate the government's interest in  
12 this issue."

13 Were you present at that June 2016 meeting?

14 A Yes, I was.

15 Q And what was the -- what were the concerns that  
16 were expressed in that meeting about the  
17 enforcement of the law society rules?

18 A I think we took it as a bit of a shot over the  
19 bow or across the bow that they relied on what  
20 was in the assessment and were serving notice  
21 that they expected to see more in terms of what  
22 we were doing in terms of enforcement. That's  
23 how I took the statement.

24 Q Okay. And I think we sort of telegraphed that  
25 we'd be speaking about the work and formation in



1 work of the Federation's AML/terrorist financing  
2 working group, which I believe was formed in  
3 October 2016; is that correct?

4 A I believe it's around then. Yeah, it was  
5 definitely in 2016.

6 Q Okay. But fair to say that at this -- the point  
7 of this memo in September 2016 that we're  
8 looking at, in light of Canada's comments in the  
9 risk assessment, the comments that were repeated  
10 in the mutual evaluation report as well as this  
11 June 2016 meeting where I think you suggested  
12 it's -- took it as a bit of a shot across the  
13 bow, that the prospects of Canada potentially  
14 introducing new legislation remained a very real  
15 prospect from the Federation's perspective at  
16 that point?

17 A I think what -- that they might wish to, yes.  
18 We did not then and I will say, speaking for  
19 myself, do not now understand how they -- what  
20 constitutionally compliant legislation could  
21 look like. So we didn't take it as a given, but  
22 we certainly understood that that was their  
23 position. Their preferred position was  
24 absolutely that the legal profession be brought  
25 within the scope of the federal regime.

1 Q Okay. I think the -- we will get into the AML  
2 working group. Your evidence is going to likely  
3 continue tomorrow, but I'd like to look forward  
4 on that same point. If you bear with me for one  
5 moment.

6 The nature of the Federation's current  
7 engagement with the Department of Finance in  
8 Canada. I know that there is the AML/terrorist  
9 financing joint working group that has been  
10 formed and we heard evidence from Mr. Ngo and  
11 Mr. Wallace earlier today about that.

12 MR. ISAAC: But if we could bring up, please,  
13 LSB002262.

14 Q And this a July 30th, 2018 memo from Richard  
15 Scott, the chair of the public affairs and  
16 government relations committee, to Federation  
17 council. And I think you'd indicated earlier  
18 that that includes representatives of all of the  
19 member law societies; right?

20 A The council, yes.

21 Q Yeah. And the date of this is July 30th, 2018.  
22 The subject is Anti-Money Laundering and  
23 Terrorist Financing Engagement With the  
24 Department of Finance.

25 A M'mm-hmm.

1 Q The issue in paragraph 1 says:

2 "The Department of Finance wishes to  
3 engage with the Federation to explore the  
4 options for collaboration on the  
5 anti-money laundering and terrorist  
6 financing file. This memorandum provides  
7 background information on engagement with  
8 the Department of Finance to date and sets  
9 out the recommendations of the Public  
10 Affairs and Government Relations  
11 Committee ... on next steps."

12 If we go to paragraph 3, still on the first  
13 page, it says:

14 "Ensuring effective anti-money laundering  
15 and terrorist financing rules and  
16 regulations for the legal profession  
17 remains a priority for the Federation. In  
18 October 2016 the Federation Council asked  
19 the CEOs Forum to establish a working  
20 group of senior staff to review the Model  
21 Rules and their enforcement."

22 And that's the working group that we described  
23 earlier; right?

24 A It's AML/TF working group, yes.

25 Q And it says:



1 with the representative of the Department  
2 of Finance and Department of Justice to  
3 discuss the Federation's anti-money  
4 laundering and anti-terrorism financing  
5 work and the role of law societies in  
6 regulating in this area. The meeting also  
7 provided an opportunity for a preliminary  
8 discussion about possibly future  
9 engagement on the anti-money laundering  
10 and anti-terrorist financing file."

11 Paragraph 7 says:

12 "Although the tone of the meetings was  
13 very positive, the Federation  
14 representatives were left with the  
15 impression that, while recognizing the  
16 constitutional limitations on imposing  
17 regulations on members of the profession,  
18 the government remained interested in  
19 finding a way to integrate the  
20 profession ... into the federal  
21 legislative anti-money laundering  
22 anti-terrorism financing framework. That  
23 impression was dispelled at a second  
24 meeting held on July 4, 2018."

25 Just pausing there. Ms. Wilson, you attending

1                   that second July 4th, 2018 meeting that's  
2                   referred to here?

3           A     Yes.

4           Q     Okay. Paragraph 8 says:

5                    "In the course of the July 4th meeting  
6                    Laurie Wright, Senior Assistant Deputy  
7                    Minister in the Policy Sector of the  
8                    Department of Justice (replacing Don  
9                    Piragoff), made it clear that the  
10                   government has no interest in repeating  
11                   history by legislating to extend the scope  
12                   of federal regime to the legal profession  
13                   and ending up in litigation. She also  
14                   indicated that the government understands  
15                   the unique position of the legal  
16                   profession particularly in regards to the  
17                   duties members of the profession owe to  
18                   their clients. Representatives of the  
19                   Department of Finance echoed that view,  
20                   indicating a strong interest in working  
21                   closely with the Federation to address any  
22                   actual or perceived gaps in the regulatory  
23                   regime resulting from the exclusion of  
24                   legal counsel from the scope of the  
25                   federal regulations."

1           So paragraph 7 that I just read, the memo says  
2           that the Federation representatives, which  
3           included you, were left with the impression at  
4           the May 14th, 2018 meeting the federal  
5           government remained interested but that that  
6           impression was dispelled at the July 4th, 2018  
7           meeting.

8                     And I think we've seen thus far in the memos  
9           and you've described that the impression that  
10          the federal government might integrate the legal  
11          profession into the federal AML framework, it  
12          was noted in the inherent risk assessment, it  
13          was repeated in the mutual evaluation report and  
14          it was noted by the Federation as having been at  
15          least telegraphed as a possibility in subsequent  
16          meetings after the litigation. So this was a  
17          significant departure, at least, from those  
18          previous indications for the perspective of the  
19          Federation. Is that fair?

20          A        So there's history to this which I think is  
21          relevant in answering your question. This --  
22          these meetings which took place in 2018 were  
23          more than three years after the Supreme Court of  
24          Canada's decision.

25                     And as I mentioned, starting with our first

1 meeting with the Department of Justice following  
2 the release of the Supreme Court of Canada's  
3 decision, we kept saying we would like to meet  
4 with the government. This is a file of shared  
5 importance, shared interest and shared  
6 responsibility and we would like to meet and  
7 talk about it. The Department of Justice was  
8 actually fairly warm to the idea, but we did not  
9 seem to get any traction with the Department of  
10 Finance. They were not presents at those  
11 meetings that I'm describing, you need to  
12 understand.

13 In the interim there was a review of the --  
14 the periodic review, five-year review, whatever  
15 it is of the legislation was undertaken by the  
16 House of Commons Standing Committee on Finance,  
17 and we attended and appeared before those  
18 hearings, and we made the point there, again,  
19 that we were interested and -- willing and  
20 interested in meeting with the government to  
21 discuss our anti-money laundering work but that  
22 we could get no -- we could get no uptake.

23 The sort of tone of the government I think  
24 began to change at those hearings where a  
25 representative of the Department of Justice



1 testified before the House of Commons Standing  
2 Committee on Finance that regulating the legal  
3 profession would be difficult. I'm not going to  
4 sort of try to cite to all of the person's  
5 evidence, but that view was the first time we  
6 had heard that.

7 When we met with the government officials  
8 for the first time in 2018, we raised the  
9 question of their intentions with regards to the  
10 legal profession, and the Department of Finance  
11 representatives were quite clear and quite keen  
12 on the fact that they would like to see us  
13 regulated. That has been -- that had been their  
14 position and was not too much of a surprise.

15 When we met again in July of 2018 and we  
16 returned to this issue, what the Department of  
17 Justice representative made clear was that they  
18 were interested in working collaboratively with  
19 the Federation and the law societies, that the  
20 prospect of regulating only to end up back in  
21 the courts held no attraction for them. And it  
22 was on that basis that we were able to see our  
23 way clear to developing a more collaborative  
24 relationship with the Department of Finance but  
25 with the federal government, effectively.

1 Department of Finance obviously has the lead.

2 We have never understood from this that the  
3 prospect of regulation is entirely off the  
4 table. That's because this is a matter to be  
5 decided by the political leaders of the country  
6 and not the bureaucrats in the country. But  
7 what was significant to us was that having gone  
8 from a fairly heels-dug-in position of, we've  
9 got to figure out, you know, what Justice  
10 Cromwell meant and how we can regulate the legal  
11 profession and focused entirely on that from our  
12 perspective. That's what it looked like from  
13 the outside.

14 We came to a very different place in those  
15 meetings in the summer of 2018 where it became  
16 evident that the federal government was willing  
17 to talk to us. Talk about what we were doing,  
18 to take us up on the invitation we had extended  
19 many times which was to see the law societies as  
20 serious public interest regulators who are dead  
21 serious about regulating to mitigate the risks  
22 of money laundering and the financing of  
23 terrorism that can occur in legal practice.

24 And that was the turning point, that  
25 meeting, which led to -- ultimately to the



1                   collaboratively, and that's what we're doing  
2                   through the working group.

3           Q       Okay. And aside from this meeting between the  
4                   Federation and the federal government  
5                   representatives, you're not aware of any public  
6                   statement or indication, publicly at least,  
7                   indicating that Canada doesn't intend to bring  
8                   in -- sorry, no longer intends to bring in  
9                   legislation; right?

10          A       I don't think -- I don't think that they have  
11                   said that and I don't think that that's what  
12                   they said here. I think it's important to look  
13                   at what they said or what is -- I wrote this,  
14                   and I can tell you that this is what I am saying  
15                   that Laurie Wright said, and that is that they  
16                   do not want to regulate just to end up back in  
17                   the courts. So that's the issue because, of  
18                   course, they correctly perceive that that is  
19                   what will happen if they take the regulatory  
20                   route. It's inevitable.

21                               And so our understanding is that they are  
22                   working with us collaboratively now, trying to  
23                   assist us, share information, learn from us  
24                   about what we're doing. We hope that we can  
25                   demonstrate to them, as I said before, that

1           there is a effective regulation of the legal  
2           profession in this regard. But I do want to say  
3           that -- and again this is why I refer to the  
4           opening statement of the federal government in  
5           these proceedings is that this possibility of  
6           regulation of the legal profession remains. I  
7           do understand it's not currently the approach  
8           the government is taking.

9           MR. ISAAC: Just noting the time, it is currently  
10          1:30 Mr. Commissioner. I think if it's available  
11          to have another five minutes just to finish off  
12          on this topic before we resume tomorrow, that  
13          would be helpful?

14          THE COMMISSIONER: Yes, that's fine. Mr. Isaac.

15          MR. ISAAC: Thank you.

16          Q     Ms. Wilson, you had indicated previously that  
17          the Federation's position was that any  
18          regulation, at least that it could contemplate,  
19          would end up in litigation. So -- and so  
20          appreciating what you're saying about, you know,  
21          the caveat of, they did not want to bring in  
22          place new legislation that might result in  
23          litigation, but I understand, from the  
24          Federation's perspective at least, that likely  
25          any legislative solution would end up in

1                   litigation. Is that right?

2           A       Well, of course we would look at -- if there's  
3                   any legislation or any regulation proposed, we  
4                   would have to review it and look at it. We've  
5                   given quite a lot of thought to this subject, as  
6                   you might imagine, and we are -- do not see, we  
7                   do not see effective options for regulating that  
8                   would avoid the constitutional problems that the  
9                   previous efforts have encountered. And in  
10                  that -- you know, from that perspective, yes, I  
11                  would anticipate that litigation would be a very  
12                  distinct possibility, but we would have to  
13                  review any legislative initiative, of course,  
14                  before we could decide.

15          Q       And since the July 4th, 2018 meeting where you  
16                  note that the impression that the government  
17                  remained interested in finding a way to  
18                  integrate the legal profession was dispelled,  
19                  there hasn't been any communication to the  
20                  Federation or anything that would suggest that  
21                  the interest has reappeared? There hasn't been  
22                  anything -- any discussions of that to point;  
23                  correct?

24          A       The last conversation that we had was earlier  
25                  this year, having read the opening statement of

1           the Department of Justice when we met with  
2           the -- when the joint working group met in June,  
3           we asked the question directly whether there was  
4           an intention, whether there was any change, was  
5           the government looking at legislation. And the  
6           response that we got was that they were not but  
7           that that decision was not a decision for the  
8           bureaucrats to make, that it would always be a  
9           political decision and so ... Never say never.

10           Q    Last question for today, Ms. Wilson. Given the  
11           significant role that the backdrop of litigation  
12           and the potential imposition of regulations, the  
13           significant role that that has played in the  
14           Federation's AML initiatives to date, the 2001  
15           rule -- the 2004 model rule, the 2008 model  
16           rule, the formation of the working group. Is  
17           there a risk that if the potential for future  
18           legislation diminishes, that the Federation's  
19           focus on AML and the impetus for future reforms  
20           may also diminish?

21           A    Maybe a short answer and a slightly longer  
22           answer, if you'll indulge me. No, I don't  
23           believe there is a risk. The reason that I  
24           don't believe that is I think that there has  
25           been an evolution over 20 years in the thinking

1                   of the law societies and the Federation about  
2                   anti-money laundering regulation, and that  
3                   evolution has brought us to a place where there  
4                   is a whole-hearted embracing at the level of the  
5                   law societies and the Federation in the idea  
6                   that there is a responsibility for law societies  
7                   to regulate in this area. That it isn't simply  
8                   a matter of strategy to the extent that that was  
9                   in fact a factor in the early days. It isn't a  
10                  matter of strategy; it's a matter of fulfilling  
11                  the public interest mandate of law societies.

12                   I think, like many people in this country,  
13                   our understanding of money laundering and its  
14                   impact on the economy and on the lives of  
15                   individuals in Canada has grown over the years.  
16                   We know much more about it. We know much more  
17                   about the risks that exist or could arise in  
18                   legal practice. And rather than seeing this, as  
19                   I think your question suggests we would, as a  
20                   purely strategic matter that we're going to just  
21                   regulate here in order to keep the government  
22                   off our backs, in fact law societies see  
23                   regulating to mitigate the risks of lawyers and  
24                   Quebec notaries becoming involved in money  
25                   laundering or financing of terrorism as being



1           absolutely part of their public interest  
2           mandate. And if you look at it from that  
3           perspective, the presence or absence of a threat  
4           of regulation is really irrelevant.

5                       And I would also say that we were doing --  
6           we were taking action to review our rules to up  
7           our gain, if you will, to develop comprehensive  
8           educational materials for members of the  
9           profession well before this statement was made  
10          at the July 4th meeting and we've continued to  
11          do so since. I think that is evidence of the  
12          commitment that we at the Federation and our  
13          members at the law societies have to regulating  
14          these risks -- regulating to mitigate the risks  
15          of money laundering and the financing of  
16          terrorism in the practice of law.

17          MR. ISAAC: Thank you, Ms. Wilson.

18                       Mr. Commissioner, in light of the time I'd  
19          ask that we resume with this evidence tomorrow,  
20          please.

21          THE COMMISSIONER: Yes, that's fine, Mr. Isaac. Just  
22          before we break, however, you have referred to a  
23          number of documents, and I'm wondering if you  
24          wish them marked as exhibits.

25          MR. ISAAC: Yes, please. Thank you for reminding me.

1                   In a less virtual environment there would  
2                   probably be someone passing me a sticky note.

3                   THE COMMISSIONER: Consider me your sticky note. So  
4                   I think the first in time was LSBC004161.

5                   THE REGISTRAR: The first one we referred to was  
6                   FLSC00001.

7                   THE COMMISSIONER: Okay. So that will be  
8                   exhibit 201.

9                   THE REGISTRAR: 201, Mr. Commissioner.

10                   **EXHIBIT 201: Federation of Law Societies of**  
11                   **Canada - Executive Memo to Council re Anti-Money**  
12                   **Laundrying and Terrorist Financing Issues -**  
13                   **September 14, 2015**

14                   THE REGISTRAR: The next one is LSB009258-1.

15                   THE COMMISSIONER: Okay. That will be 202.

16                   THE REGISTRAR: 202.

17                   **EXHIBIT 202: Email from Deborah Armour, re FATF**  
18                   **- November 09, 2015**

19                   THE REGISTRAR: And then the next document is  
20                   LSB004161.

21                   THE COMMISSIONER: That will be 203.

22                   THE REGISTRAR: Exhibit 203.

23                   **EXHIBIT 203: Memorandum from Federation**  
24                   **Executive to Council of the Federation**  
25                   **& Law Society Presidents & CEOs Re Anti-Money**

1                   **Laundering & Terrorist Financing Issues -**  
2                   **December 3, 2015**

3                   THE REGISTRAR: Next one is FRSC0000002.

4                   THE COMMISSIONER: All right. 204.

5                   THE REGISTRAR: Exhibit 204.

6                   **EXHIBIT 204: Federation of Law Societies of**  
7                   **Canada - Memorandum from Frederica Wilson to**  
8                   **CEO, re FATF Mutual Evaluation Report -**  
9                   **September 21, 2016**

10                  THE REGISTRAR: And the next one is LSB002262.

11                  THE COMMISSIONER: 205.

12                  THE REGISTRAR: Exhibit 205.

13                  **EXHIBIT 205: Federation of Law Societies of**  
14                  **Canada - Memorandum from Richard Scott to**  
15                  **Federation Council Law Society Presidents and**  
16                  **CEOs, re Anti-Money Laundering and Terrorist**  
17                  **Financing Engagement with Department of**  
18                  **Finance - July 30, 2018**

19                  THE COMMISSIONER: Does that bring us up to date?

20                  MR. ISAAC: According to my notes it does,  
21                                Mr. Commissioner.

22                  THE COMMISSIONER: Thank you. We will adjourn until  
23                                tomorrow morning at 9:30, then.

24                  THE REGISTRAR: This hearing is adjourned until  
25                                November 17th, 2020, at 9:30 a.m. Thank you.

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**(WITNESS STOOD DOWN)**

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**(PROCEEDINGS ADJOURNED TO NOVEMBER 17, 2020)**

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