

**PROCEEDINGS AT HEARING
OF
NOVEMBER 17, 2020 – SESSION 1**

COMMISSIONER AUSTIN F. CULLEN

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November 17, 2020

(Via Videoconference)

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

FREDERICA WILSON, for
the commission,
recalled.

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

THE COMMISSIONER: [Indiscernible] ... Madam Registrar.

MR. MCGOWAN: Mr. Commissioner, your sound was a little bit unclear to me. I wonder if you might say something again so we can see if it's working.

THE COMMISSIONER: Is that better?

MR. MCGOWAN: Yes, that's better. Thank you.

THE COMMISSIONER: Thank you. I just called upon Mr. Isaac to resume, if he is ready to do so.

MR. ISAAC: Thank you, Mr. Commissioner.

EXAMINATION BY MR. ISAAC (continuing):

Q Ms. Wilson, we left off yesterday speaking about a July 2018 memo and I'd like to just pick up what we left off, please. Madam Registrar, that's LSB002262 which is also exhibit 205, please. Now, I think we left off yesterday

1 speaking about paragraph 8. I'd like to move
2 down please to paragraph 9 of this memo. And it
3 says here:

4 "Departmental officials spoke candidly
5 about the reputational challenges Canada
6 is facing as a result of the criticisms
7 contained in the mutual evaluating report
8 from the FATF. In addition to criticisms
9 about perceived gaps resulting from the
10 Supreme Court's confirmation that the
11 federal legislation cannot extend to legal
12 counsel, the FATF was highly critical of
13 Canada's failure to have meaningful
14 requirements related to disclosure of
15 beneficial owners of corporations and
16 other organizations. Associated Assistant
17 Deputy Minister Annette Ryan indicated
18 that Canada is under pressure to respond
19 to those criticisms. She also advised
20 that the report from the House of Commons
21 Standing Committee on Finance, expected in
22 the fall, will likely exhort the
23 department to take quick action on a
24 variety of issues, including rules related
25 to beneficial ownership and may also

1 address the issue of regulation of the
2 legal profession."

3 Ms. Wilson, is the summary of the July 4th, 2018
4 meeting, both this portion that I read and as
5 well as the previous portions that are contained
6 in this memo, an accurate reflection of your
7 recollection of what was discussed at that
8 meeting?

9 A Yes. I can't say as I sit here today that
10 nothing else was discussed, but what is set out
11 in the memo is accurate.

12 Q Okay. And if we go down in the same memo just
13 above paragraph 12 there's a section called
14 "Proposed Engagement," and this section goes on
15 to describe Annette Ryan identifying specific
16 areas for engagement and floating the idea of
17 establishing dedicated working groups with the
18 representatives of the law societies and the
19 department of finance, the RCMP and FINTRAC.
20 And there is a proposal as well down just about
21 paragraph 14 regarding next steps. It's after
22 this July 2018 meeting and the memo here that
23 the Government of Canada and the federation
24 subsequently announced the formation of the
25 joint working group on money laundering and

1 terrorist financing; is that right?

2 A That's correct.

3 Q When was that announcement made?

4 A I thought you might be going to ask me that, and
5 not certain that I remember with great
6 certainty. It was, to the best of my
7 recollection, some months after that because
8 that we had not yet engaged in a detailed way on
9 terms of reference and so on. So that is the
10 action that followed this meeting.

11 Q Okay. And we will return to look at that joint
12 working group later, but I would like to go back
13 in time now roughly two years to the
14 federation's own AML working group that it
15 formed in late 2016, and we were addressing
16 yesterday the various developments in the AML
17 landscape that the federation identified in
18 leading up to the formation of that working
19 group and I'd just like to turn back to the
20 formation of that AML working group, please.

21 A Okay.

22 Q And if you could please just begin by describing
23 for the Commissioner what the mandate and
24 composition of the federation's own AML working
25 group was.

1 A So the first thing to say is that the working
2 group was not actually established until 2017.
3 The 2016 date refers to approval by our council
4 or our board of directors of the concept and
5 that concept was to go to the chief executive
6 officers of the laws societies and get them to
7 undertake the formation. So of course there was
8 some discussion with the CEO's group followed by
9 nominations, so to speak, from the law societies
10 as we put the working group together. So that
11 was formed in 2017. The mandate was primarily
12 to undertake a review of the model rules and to
13 consider whether there were amendments or
14 additional rules required and also to look at
15 issues related to enforcement and compliance
16 mechanisms. The working group was and remains a
17 senior staff working group. There was a
18 decision made that it was important to have on
19 the ground expertise rather than sort of the
20 political perspective that elected officials
21 might bring. There are representatives of nine
22 law societies plus myself, I co-chair the
23 working group with Jim Varro from the Law
24 Society of Ontario.

25 Q Are there representatives of the Law Society of

1 gathering information on enforcement, and so it
2 was the second subworking group that undertook a
3 survey of the law societies to find out what
4 tools they had at their disposal for monitoring
5 compliance and enforcing the rules. The survey
6 demonstrated that all but one law society, and
7 that is the Law Society of Nunavut, which is a
8 very much our smallest law society, the
9 primarily non-resident membership, which means
10 that most of their members are members of other
11 law societies. All but one of the law societies
12 have comprehensive spot audit programs. Those
13 programs the spot audit nature is genuinely
14 random, but in addition the audit programs are
15 supplemented by risk-based audits. Some law
16 societies use data analytics. That was starting
17 around the time that we did the survey. It's
18 more entrenched in some law societies today.

19 In some cases the survey demonstrated that
20 in some cases law societies had policies of
21 referring all breaches of the cash transaction
22 rule for investigation. In others, and this is
23 a typical way that discipline matters are
24 approached, there is some discretion as to what
25 gets referred for further investigation or

1 discipline or what gets moved into more of a
2 remedial stream and educational approach, and
3 that is based on the assessment of sort of the
4 willfulness and knowledge of the lawyer
5 involved.

6 The survey also -- actually I'm not certain
7 it was the survey, but the process of looking at
8 how the law societies enforced their rule also
9 demonstrated something I referred to yesterday
10 which is the difficulty in extracting consistent
11 and comparable data across the law societies
12 because of the way that they classify
13 investigations and disciplinary matters.

14 We invited the respondents to the survey to
15 talk about what areas they might need assistance
16 with or areas in which they might identify as
17 areas in which there could be improvement. One
18 of the key ones was more education for members
19 of the profession and also for law society
20 staff. In addition, there were suggestions of
21 the value of clarifying some aspects of the
22 rules. Of course they'd had years of experience
23 and knew what they got asked about and where
24 confusion might lie amongst members of the
25 profession. There was also a general sense that

1 we needed to take a look at the trust accounting
2 rules and to see whether or not there are things
3 that could be tightened up across the country
4 there.

5 Q I think we saw in the 2015 memo that we saw
6 regarding the mutual evaluation process that one
7 the concerns that had been identified by the
8 FATF evaluators was about the availability of
9 data about the enforcement of the law societies
10 AML rules across Canada. Is that something that
11 the survey sought to address and was it able to
12 collect data about how the AML rules were being
13 enforced, monitored and enforced across Canada?

14 A If you mean statistical data showing how many
15 investigations for this, that or the other
16 breach and how many cases referred to
17 discipline, the answer is no. And that's what I
18 was alluding to a moment ago. Law societies --
19 and we are working on changing this, but law
20 societies classify an investigation or
21 disciplinary matter according to how the
22 citation against the lawyer or how the
23 investigation is framed. So if, for example, a
24 breach of the cash flow was discovered during a
25 trust account audit and there were other trust

1 account problems or even if there weren't, the
2 chances are that that is going to show up as a
3 investigation or a citation for -- ultimately a
4 citation for a breach of the trust accounting
5 rules, and it will not necessarily refer
6 specifically to a breach of the cash
7 transactions rule, and that may be evident in
8 reading a citation, but in the statistics that
9 are gathered by law societies it's not
10 necessarily there. That's something that some
11 law societies have already begun to change as a
12 result of the work of our working group. Our
13 law societies, as you can imagine, very
14 tremendously in size, you know, from the Law
15 Society of Ontario which regulates more than
16 50,000 lawyers down to the Law Society of
17 Nunavut which has fewer than -- well, perhaps
18 has 100 resident lawyers. And that means that
19 their resources, including things like -- sorry,
20 the word is escaping me, not databanks but the
21 electronic facilities to collect data and to
22 analyze it are quite variable, but I would say
23 that other than the tiniest law societies, by
24 which I mean the territorial law societies and
25 possibly the Law Society of Prince Edward

1 Island, all of the law societies today are
2 better able to collect statistical data and it
3 is a current but fledgling project of our
4 working group to look at ways of ensuring that
5 we have comprehensive and consistent, in terms
6 of what is being measured, data from across the
7 country.

8 Q And generally how did the that survey indicate
9 that the Law Society of British Columbia stood
10 with respect to its peers in terms of the key
11 issues looked at with respect to AML?

12 A I would describe the Law Society of British
13 Columbia then and now as one of the more
14 sophisticated law societies, like the Law
15 Society of Ontario and the Barreau du Québec
16 with more of a very comprehensive audit program.
17 I believe at the time it demonstrated that they
18 did something like 600 audits a year, and those
19 are of firms, as you know, not individual
20 lawyers so it encompasses more lawyers. And had
21 both a random and a risk-based approach to
22 audits and investigations that I think the Law
23 Society of British Columbia has only increased
24 in its sophistication in this regard, but it was
25 definitely one of the more sophisticated law

1 societies at the time that the survey was
2 conducted.

3 Q Okay. Turning to the other component of the
4 work of the working group that you describe was
5 the review of the content and substance of the
6 then existing federation model rules. Can you
7 describe briefly, please, how the working group
8 went about approaching that review?

9 A Sure. We of course met, looked at the rules,
10 talked about the experience. This is the
11 advantage of having senior law society staff who
12 deal directly in these areas, so the working
13 group is comprised of people who are involved in
14 the investigations, an enforcement arm of the
15 law societies as well as trust accounting,
16 senior trust accounting staff, so we had the
17 value of their in many cases many years of
18 experience with the rules. That was one of the
19 things we looked at. We looked very carefully
20 at the federal government's regulations and the
21 amendments to the regulations that had been
22 enacted in the time from the enactment of our
23 model rules. We of course looked at the FATF's
24 mutual evaluation. We looked -- although this
25 was perhaps a little more relevant to the

1 educational work that we did, but we looked at
2 the risk-based guidance both from the FATF and
3 the International Bar Association, amongst
4 others, to identify what others were doing and
5 what were some possible areas that we should
6 focus on. The other thing to note is that we
7 took the position at the outset that the goal
8 was to assess whether or not the rules were as
9 effective and robust as they should be to manage
10 the risks that they were intended to address.
11 So nothing was off the table. It wasn't -- you
12 know, sometimes when you are looking at
13 regulations you're really only looking at has
14 anything changed, do we need to tweak here and
15 there. We stood right back from both rules, and
16 we had an early conversation in that regard
17 about risk-based approaches and whether we
18 should be stepping completely back and looking
19 at a different approach. There were lots of
20 reasons why we didn't do that at the time, but
21 that's still very much on the table.

22 Q You mentioned the term "risk-based approach"
23 several times now, Ms. Wilson. If you could
24 just explain what you mean by a risk-based
25 approach and what that actually involves?

1 A Generally people involved in anti-money
2 laundering initiatives around the world have
3 moved from -- or at least moved in what they
4 recommend, not necessarily what they're doing,
5 but have moved from recommending sort of rules
6 with which everybody complies, everybody has the
7 same obligations, everybody applies in the same
8 context and as long as they have complied that's
9 more or less the end of it, to regulatory
10 efforts that are focused on -- that focus the
11 sort of regulatory -- the greatest regulatory
12 efforts in areas of greatest risk. So that
13 could mean that you would have different rules
14 for different contexts or more perhaps a
15 baseline of rules supplemented by more
16 comprehensive rules depending on the level of
17 risk that a particular sector might encounter or
18 a particular activity might encounter.

19 Q Specifically in relation to the regulation of
20 lawyers, can you give an example of what a
21 risk-based approach to the regulation of the
22 profession might involve?

23 A Sure. I can't sort of give you an idea of what
24 the regulatory framework might look like
25 precisely because we haven't gotten that far in

1 our thinking yet. But I would say that you can
2 appreciate I think from the things that -- some
3 of what we've talked about in the last day and a
4 bit and some of what other witnesses have
5 testified to and the federal government's risk
6 of sort of assessment of inherent risks that not
7 all sectors of the economy are equally risky
8 or equally vulnerable, to money laundering in
9 the financing of terrorism. And that's true in
10 the legal profession as well. So to take an
11 example, a labour lawyer who works for
12 institutional clients who does purely
13 arbitration based practice appearing before
14 tribunals has perhaps no or little engagement
15 with individuals as clients rather than
16 organizations presents less risk than somebody
17 involved in a real estate practice or in certain
18 areas of corporate law. So if you were taking a
19 risk-based approach, you would tailor the
20 obligations the members of the profession need
21 to meet based on the risks, whether it's the
22 risk of their practice area or the risk of
23 specific types of transactions. Of course risk
24 is a part of our approach primarily in the
25 educational side but also in current provisions

1 in our client identification and verification
2 rule, but I think it's fair to say that neither
3 our approach nor the approach of the federal
4 government would be what one would describe as a
5 risk-based approach at this stage.

6 Q So that potentially looking at further
7 risk-based measures is work that remains
8 underway at the federation level; is that fair?

9 A I would say it's on our plate. We have been
10 doing a lot of work on risk in the education
11 area. We are not yet ready to stand back
12 completely from our rules and say should we be
13 adopting a completely different approach,
14 something that looks very different than what we
15 have today. The reasons for that are multiple.
16 One is that we have seen -- we have looked to
17 the federal government to see what they are
18 doing as a guide and the federal government's
19 regime, as I mentioned a moment ago, is not
20 risk-based approach, not in the way that I would
21 understand it or we at the federation understand
22 it. And we have also been aware while we've
23 looked at that that our rules and the
24 government's regulations because they have been
25 enacted quite a lot of amendments over the last

1 few years don't align as closely as we might
2 like and we think it's important to get them
3 there. Moving to a completely different
4 approach to regulation in this area is a big
5 project and it's not something that involves
6 tweaking or passing amendments to rules. It
7 would involve a much more comprehensive overhaul
8 of the approach. We have approached risk to
9 date primarily in educational materials.

10 Q Would it be fair to say that looking at other
11 potential sort of international models that the
12 UK's solicitor regulator authorities approach is
13 more of a risk-based approach than the regime
14 than currently exists in Canada for legal
15 professionals?

16 A I don't think it's the SRAs. I think the UK's
17 model because the exhortation to take a
18 risk-based approach comes from above. The SRA
19 is a supervisor of the regulations of the
20 government regulations. It's not their own
21 regulations, but do they supervise from a
22 risk-based approach, yes. Are they quite there
23 yet? I would say no and I think they would say
24 that, too.

25 Q I would like to go through some of the specific

1 rules and the changes that were made to them.

2 So starting, please, with the model cash rule.

3 There was a subgroup formed to look at this rule
4 in particular; is that right?

5 A That's correct.

6 Q What was the composition of that subgroup
7 please?

8 A I chaired it. There were representatives of the
9 Law Society of British Columbia. To the best of
10 my recollection it took place, I believe, before
11 Gurprit joined the team. I believe Deb Armour
12 and Jeanette McPhee were both on that committee,
13 on that working group. I'm pressing my memory a
14 bit. There was a fellow from the Law Society of
15 Ontario. We have two representatives from the
16 Law Society of Ontario in our group as well.
17 Jim Varro headed up the other subworking group
18 on the rules on client identification
19 verification. But Jim has been involved in this
20 work longer than any of us, and so he is
21 involved in everything. We involve him in all
22 of that work. I believe Brenda Grimes from the
23 Law Society of Newfoundland was on that working
24 group, and honestly I would have to go look at
25 my notes or reports to determine who else was

1 there.

2 MR. ISAAC: Madam Registrar, if you could you bring
3 up, please, FLSC00032.

4 Q Ms. Wilson, these are the new model cash rules
5 and I think yesterday I asked you to cast your
6 mind back to 2004 and recall that the rules were
7 then and I put this up at least for your
8 reference, but would I hope that you could
9 summarize really the key principle changes that
10 were made to the model cash rule through this
11 process.

12 A I can do that. And this might be an opportunity
13 for me to answer something I wasn't able to
14 answer yesterday, which was the application of
15 the no cash rule in the context of
16 representative capacity work. I can come to
17 that later or now as you wish, but I wanted to
18 be able to look at the rule before I answered
19 that question and I have and I am prepared to
20 answer it as we go through this if that's of
21 assistance.

22 Q I think that would be of assistance, please,
23 Ms. Wilson.

24 A Okay. Why don't I start there so I don't forget
25 to do it. I think generally it's a little bit

1 more complicated than it might look, but the way
2 the rule is framed it applies in the context of
3 doing certain things for clients, essentially,
4 with provision of legal services to clients. So
5 in that context it is possible to be serving in
6 a -- that acting in a representative capacity
7 could flow from your legal practice, it
8 certainly happens, but I would say generally
9 that the rule doesn't apply in that context. I
10 do want to say, however, that law societies have
11 specific rules that address representatives
12 capacity work, and specifically the accounting,
13 some law societies have rules that oblige
14 lawyers to notify the law society when they are
15 acting in a representative capacity, and all law
16 societies, to my knowledge, have rules that
17 allow law societies to audit and investigate the
18 finances. We are very much alive to the need to
19 regulate and oversee the handling or the
20 directing of money by lawyers in all areas,
21 including those that are not that are not
22 perhaps directly linked to the provision of
23 legal services to a client. And as you are no
24 doubt aware, law societies' rules and the rules
25 of professional conduct in particular are not

1 limited in their application only to work in the
2 context of directly through legal practice. The
3 reach of the law society is quite a lot greater
4 than that. And law societies can and have
5 exercised that authority in regards to things
6 like representative capacity and other things.

7 So the rule, it would be helpful if you
8 scroll down to the numbered portions of the
9 rule, Madam Registrar. Yeah, that's great. The
10 first part of the rule deals with definitions.
11 There were some changes to definitions largely
12 to align with federal regulations and also to
13 address certain things that weren't defined in
14 the rule, so for example, disbursements or
15 professional fees, those sorts of things weren't
16 defined in the early version of the rule. So
17 those were amongst the amendments in the first
18 part of the rule. In the second part of the
19 rule other than a bit of tinkering in section 1
20 which turned out that there's some confusion
21 over the meaning of the \$7,500 threshold so we
22 fixed that. Do not change anything in
23 substance; it's just a drafting amendment. We
24 considered -- and just so that you understand
25 our process, we developed proposals. We then

1 conducted a consultation on them; we then took
2 all of the feedback from the consultation and
3 took it on board and produced proposed amendments
4 that went to our council for approval. So in
5 the initial [indiscernible] we proposed
6 [indiscernible] and we also prior to the
7 consultation we looked at the question of
8 capping lawyers fees. In the working group --
9 can you see me and hear me? I'm just getting a
10 message that my wifi is unstable, so please let
11 me know if you are not hearing me.

12 The working group raised that issue to say
13 that we thought there might be merit in looking
14 at capping the money that could be taken in in
15 disbursements or legal fees, the cash that could
16 be taken in. We really were at a bit of a loss
17 as to where to start on that in terms of
18 monetary amounts. We took it to the full
19 working group where we decided that it required
20 more advance consultation, more thinking about
21 what were appropriate limits and that means
22 understanding what lawyers are charging in fees,
23 what kinds of disbursements they are incurring
24 and so forth, and we were not ready at that time
25 to do that work. We ended up with amendments --

1 an amendment to -- after the consultation an
2 amendment to the [indiscernible] that deleted
3 the exception that existed for moneys paid or
4 received pursuant to a court order. We
5 maintained the other amendments, although we had
6 entertained also deleting the amendments, the
7 exception for money obtained from a police
8 officer, et cetera. That's 4(b). And 4(c) to
9 pay a fine penalty or bail. The rationale for
10 what we recommended in the end be deleted and
11 what we capped was based on a combination of
12 assessing the relative risk that the exception
13 posed and the relative utility that it provided.
14 We had thought that the exceptions for money
15 received from a peace officer, for example, were
16 very low risk, but we didn't think it was likely
17 much used and we proposed to delete it on that
18 basis. And we got a lot of feedback saying on
19 the contrary it was useful, it's perhaps in
20 somewhat limited circumstances but that it does
21 occur and because it is low risk given the other
22 parties involved we maintained that. With
23 respect to court orders we deleted that because
24 even though one might look at that and say well,
25 if a court is ordering it that's low risk, the

1 difficulty presented by that is that there can
2 be what we refer to as sham litigation. So the
3 whole thing is really a cookup from the
4 beginning. Somebody comes with a claim against
5 somebody else, you know, goes to court, perhaps
6 it's uncontested and a person doesn't contest,
7 doesn't defend themselves, there's an order made
8 for payment, et cetera, and that could all be
9 entirely fraudulent without the lawyer involved
10 knowing that. So we took that exception out.

11 Those really, I think, summarize the changes
12 we made to that rule.

13 Q Okay. I would like to turn to look at a couple
14 of the potential reforms that were identified
15 through this process but that were not
16 ultimately incorporated in the revised model
17 rule.

18 MR. ISAAC: Before we do that if we could please mark
19 this document as the next exhibit.

20 THE COMMISSIONER: 206, Madam Registrar.

21 THE REGISTRAR: Yes, exhibit 206.

22 **EXHIBIT 206: Federation of Law Societies of**
23 **Canada - Amended Model Rule on Cash Transactions**

24 MR. ISAAC: The next document, Madam Registrar if you
25 could bring up FSC000018. That should be four

1 zeros. And this is a memo from the no cash
2 model rule subgroup dated April 8, 2017. The
3 subject is "review of the no cash rule." If we
4 could mark that as the next exhibit.

5 THE COMMISSIONER: 207.

6 THE REGISTRAR: Exhibit 207.

7 **EXHIBIT 207: Federation of Law Societies of**
8 **Canada - Memorandum from No Cash Model Rule**
9 **Sub-group, re Review of No Cash Rule - April 8,**
10 **2017**

11 MR. ISAAC:

12 Q If you could scroll down please to paragraph 6
13 on page 2. The paragraph there about midway
14 through it's referring to rules regarding the no
15 cash rule and there's a sentence that starts
16 about midway through the paragraph says:

17 "All law societies also require members to
18 record cash transactions. The Barreau du
19 Québec goes farther; regulation 71
20 requires the submit a copy to the Barreau
21 within 30 days of the receipt for any cash
22 over \$7,500 together with a notation
23 indicating the exemption under which it
24 was received."

25 And just pausing there. As I understand it the

1 distinction here is that in Quebec reporting of
2 the use of an exception to the cash rule is made
3 not in realtime, but within 30 days there is a
4 requirement to report that one is doing that.
5 And that's different than for example other
6 jurisdictions that require, for example, a
7 declaration, a self-declaration perhaps at the
8 end of the year. Now, I've seen some comments
9 at least in the discussions here about the
10 potential benefits of a realtime reporting of
11 the use of these exceptions in terms of
12 requiring the lawyer to turn his or her mind to
13 the exception at the time they are using it, as
14 well as a potentially assisting in the audit or
15 monitoring process. Do you recall whether there
16 was a -- this particular rule that exists in
17 Quebec does not seem to have been taken up
18 further than this. Was there a reason that the
19 federation decided not to adopt a Quebec-style
20 rule into the model cash rule nationally?

21 A I don't recall any discussion about it. That
22 doesn't mean there wasn't any discussion, but it
23 does mean that I don't recall it. I do know
24 that it didn't make its way into any proposal.
25 I take this opportunity to let you know, though,

1 that the Barreau is not the only law society
2 that has some kind of reporting requirement.
3 The Law Society of British Columbia, to my
4 knowledge, also has, but I don't know when that
5 was introduced. I don't recall.

6 Q Is it your you can understanding that the Law
7 Society of British Columbia requirement is one
8 that that is sort of a self-report that's made
9 annually or do you have --

10 A It's my understanding that they have to report
11 to the chief executive officer. At least I'm
12 90 percent confident in my recollection of that.
13 That's the best I can do.

14 Q Okay. My understanding, and I may be wrong
15 about this, is that the requirement to report to
16 the executive director in British Columbia is
17 limited to where the -- where cash is received
18 in circumstances it should not have been?

19 A Yes, above the limit, yes.

20 Q Yes.

21 A Yes, I think you're right about that. I believe
22 that's correct. All law societies in Canada do
23 have the and annual reporting requirement which
24 is a self-report. And I would also note that
25 one of the things that law societies do in their

1 audit programs is things like having reported
2 that you accepted cash above the limits or in
3 circumstances in which you are not permitted to
4 are things that are added to the risk evaluation
5 that law societies do in determining which law
6 firms to audit on a targeted basis as opposed to
7 a random basis.

8 Q I think you referred to the next question which
9 is sort of a fundamental one earlier in your
10 testimony, Ms. Wilson, which was the question of
11 whether or not you considered whether to do away
12 with the legal fees exception to the cash rule
13 entirely. I'm wondering whether did the
14 federation consider or have data about how often
15 the cash exemption for legal fees was actually
16 used and how necessary it is, particularly given
17 that we are an increasingly cashless society?

18 A We did look at that. You know, there are you
19 know 130-odd thousand lawyers in Canada, so of
20 course you know, we didn't undertake -- I
21 shouldn't say "of course," but we didn't
22 undertake a survey of all lawyers. We looked at
23 certain sort of target groups, so criminal
24 lawyers being one. We talked to banks and so on
25 in the context of our work in this area to try

1 to get a sense of just how much cash was -- not
2 quantities of cash but how frequently fees were
3 paid in cash because our sense was we didn't
4 think it was likely to be all that often, and
5 what we learned was it remained an important,
6 not necessarily common, but an important
7 opportunity or means of certain types of clients
8 paying their fees. So I mentioned yesterday I
9 think that it was suggested to us by some of our
10 law societies with larger rural populations --
11 sorry in jurisdictions with larger rural
12 populations that it was not at all uncommon in
13 that context for farmers and so on to pay their
14 fees in cash. Somewhat to our surprise we
15 learned that criminal lawyers it's much more
16 mixed. Some will accept cash for fees and many
17 won't. They don't. So it's one of those areas
18 certainly at the time that we looked at where we
19 thought it's not that commonly used in lots of
20 areas of practice but it is -- was considered at
21 that time, in any event, an important exception
22 for certain segments of the population. I
23 believe I mentioned yesterday that this is again
24 under review, so we are looking again at whether
25 to -- at that time we were talking about should

1 with the provision of legal services by
2 the lawyer or the lawyer's firm."

3 So correct to understand that currently the
4 model rules doesn't place any upper limit on
5 cash that may be received under one of the
6 exceptions; is that correct?

7 A That's correct. It does require that all
8 refunds be in cash and that is really just to
9 that lawyers are not paid money allegedly for
10 fees or disbursements, for example, only to have
11 clients, say, walk away and ask for a refund
12 immediately of a large amount of cash and get it
13 back in a -- potentially if they were trying to
14 launder money in a cleaner form like that.

15 Q I think you described the discussions around
16 this potential cap question as being fraught.
17 Can you explain what sort of the main sticking
18 points are, what are the main issues that make
19 this a fraught issue.

20 A It's just that the legal -- it's really just a
21 matter of trying to identify a number that is
22 meaningful that isn't simply arbitrary. One
23 could say well, let's say it's \$10,000. Let's
24 just say it's \$5,000. Let's just say it's
25 \$25,000. It will or are not be a meaningful

1 amount depending on the nature of the legal
2 services being sought. If you are undertaking a
3 trial in a superior court in the country,
4 \$25,000 is nothing. If on the other hand you're
5 asking somebody to review an agreement of
6 purchase and sale, it's excessive. So that is
7 why in our current considerations we are looking
8 at whether the exemption should exist at all.
9 It's difficult -- well, because for two reasons.
10 One is that the assessment of whether it's
11 serves a useful function that it does not
12 interfere with the purpose of the rule, with the
13 goal of the rule, and of course that is partly
14 an examination of whether it's used and who uses
15 it and so forth. But it's also an examination
16 of a potential risk that the exemption creates.
17 In this case in the absence of a limit, I think
18 we would say there are some risks associated
19 with it which might not be justifiable in light
20 of the goal of the rule and the options are
21 place a cap or do away with it really, maintain
22 it, place a cap or do away with it. And the
23 difficulty with the cap is, as I said, finding a
24 meaningful dollar figure and we haven't landed
25 anywhere yet but that makes the notion of doing

1 away with it a more straightforward alternative
2 that's consistent with the goal of the rule and
3 doesn't get us into sort of mental gymnastics of
4 trying to ascertain, you know, is it \$2,000,
5 \$5,000, \$25,000, what's an appropriate cap in
6 the circumstances.

7 Q The last sentence that I read from this
8 paragraph refers to the model rule being
9 specified that the exception only applies when
10 cash is received in connection with a provision
11 of legal service. I'd like to address that a
12 little bit further.

13 MR. ISAAC: If we could please pull up FLSC19,
14 please.

15 Q And this is the title page here is "Consultant
16 Report, Anti-Money Laundering Terrorist
17 Financing Working Group," October 2, 2017. I
18 think you said, Ms. Wilson, that as part of the
19 model review process there was consultation with
20 the member law societies to consider the
21 proposed changes to the rules. Is that right?

22 A Yes, but not only with the law societies as we
23 went beyond that. I believe that we included
24 Canadian Bar Association in the consultation.
25 This is not unusual for us. We usually reach

1 wider than only the law societies in any of our
2 consultations.

3 Q Did you also consult with the federal government
4 at all as part of the consultation?

5 A Not in the early stages. It's a bit of a timing
6 question, as you'll see, in terms of where we
7 were in our relationship with the government at
8 the time that we released the consultation
9 report.

10 MR. ISAAC: Okay. If I could ask that this be marked
11 as the next exhibit.

12 THE COMMISSIONER: 208.

13 THE REGISTRAR: Exhibit 208.

14 **EXHIBIT 208: Federation of Law Societies of**
15 **Canada - Consultation Report Anti- Money**
16 **Laundering and Terrorist Financing Working**
17 **Group - October 2, 2017**

18 MR. ISAAC:

19 Q And if we go down, please, to paragraph 12,
20 which is on page 4.

21 A Can I ask you to zoom in a little bit on that,
22 please, Madam Registrar. Thank you.

23 Q The paragraph reads:

24 "The working group is recommended that the
25 rule be amended to specify the exceptions

1 to the cash limit apply only where the
2 lawyer or law firm is providing legal
3 services. This flows from law society
4 experience revealing that lawyers
5 sometimes rely on the exceptions to
6 justify accepting large amounts of cash
7 even though it is not related to the
8 provision of legal services. In the view
9 of the working group this interpretation
10 is inconsistent with the letter and spirit
11 of the rule."

12 Do you recall what law society experience is
13 referred to here in terms of lawyers sometimes
14 relying on the exception to justify large
15 amounts of cash unrelated to legal services?

16 A I can't say that law society X said that this
17 many lawyers have said this because that isn't
18 the way we would do our business. We talked
19 about the experience generally and the comment
20 was made that in that self-reporting, in that
21 annual self-reporting in particular, where we
22 might have to indicate whether you accepted more
23 than the threshold amount or accepted cash in a
24 circumstance you're not permitted to, that
25 lawyers would say well, I did it here because,

1 you know, I am allowed to do it because of this,
2 and they would cite the relevant exception. And
3 our basic position is, and leaving aside things
4 like representative capacity work, our basic
5 position is that the money that lawyers are
6 accepting and that they are putting in their
7 trust account must be related to provisional
8 legal services directly and similarly that the
9 this exceptions to accepting cash that exists in
10 this rule must be limited to the circumstances
11 of providing legal services. That's the
12 purpose; right? The purpose is to have an
13 exception that is useful and not unduly risky in
14 the context of the practice of law not to
15 provide back door way to people use lawyer's
16 accounts or whether they are trust accounts or
17 otherwise for banking services. I am not
18 suggesting that lawyers were doing that, but I
19 think that they -- the rule was not well enough
20 understood and that was the reason for the
21 proposed amendment which in fact was
22 implemented.

23 Q When you say "the proposed amendment," you are
24 referring not to an amendment to the cash rule
25 but the introduction of the trust accounting

1 rule?

2 A I'm referring to the amendment to the cash rule.
3 So there is at least, to the best of my
4 recollection and it's not impossible that I'm
5 misremembering. You know I have looked at
6 hundreds of documents in preparation for this
7 hearing, so I apologize and I don't have in
8 front of me the annotator tracked changes
9 version of the rule as it went forward, but my
10 recollection is that we added language to the
11 introductory paragraph to the exceptions that
12 refers to -- that refers to that language with
13 the provision of legal services.

14 Q Okay. The next rule I'd like to address is the
15 model CIV customer identification and
16 verification rule. I take it there was a
17 subgroup that was tasked with examining this
18 rule as well.

19 A That's right. Jim Varro headed up that
20 subgroup.

21 MR. ISAAC: If we could pull up, Madam Registrar --
22 yes, we did mark this as an exhibit already --
23 FLSC38, please, as well as -- actually sorry,
24 instead of that if we could full up FLSC30.
25 That is the amended CIV rule.

1 Q I appreciate it's quite a complex rule to begin
2 with and it has a number of changes, so I'm
3 showing it to you mainly for reference. If you
4 could confirm that is the amended CIV rule and
5 then we'll mark that as the next exhibit and
6 I'll take you back to the other document I
7 mentioned which is a helpful one page summary.

8 A If up want me to confirm that it's the amended
9 one you need to scroll down a bit so I can look
10 for things that I know were changed and I'll
11 tell you once I have enough. Yes. I think this
12 is the amended one.

13 MR. ISAAC: If we could mark that, please, as the
14 next exhibit.

15 THE COMMISSIONER: 209.

16 THE REGISTRAR: Exhibit 209.

17 **EXHIBIT 209: Federation of Law Societies of**
18 **Canada - Amended Model Rule on Client**
19 **Identification and Verification**

20 MR. ISAAC:

21 Q If we could go back to FLSC38, please. This is
22 a one-page summary of the major changes. I'm
23 not asking you to read it, but I take it that
24 there is a section that refers to the model rule
25 on client identification and verification in the

1 middle that summarizes. If you could just
2 briefly explain what the principal changes were
3 to the CIV model rule?

4 A There were amendments to the definitions. The
5 amendments to the definitions were a combination
6 of tracking federal regulations and defining
7 some things that were not defined in the rule
8 initially. So that was one type of change.
9 Didn't change the substance of the rule. Simply
10 for clarity. There is a change at section 2(1)
11 which we consider to be quite significant and it
12 was the addition of some language that refers to
13 the lawyer's obligations to know their client,
14 understand their client's feelings in relation
15 to the retainer with the client and manage
16 any -- and manage risks that might arise from
17 the professional business relationship with the
18 client. That is significant for us because this
19 was a sort of a tie-in to, a sort of reminder
20 that complying with the rules isn't only a
21 matter of complying with this specific
22 requirements of this rule. This rule exists in
23 the context of a broad suite of rules which are
24 already in place such as the rules of
25 professional conduct that speak in quite a lot

1 of detail to ethical obligations that include
2 the one I talked about yesterday which is the
3 obligation not to facilitate or assist with the
4 commission of any illegal act. There were some
5 amendments -- the rule got restructured a little
6 bit, not in terms of the provision, not in the
7 sequence of provisions but in the context to
8 track the federal -- largely to track the
9 federal rules. We deleted the exemption for
10 when the verification rules apply. We deleted
11 the exemption to match the deletion of the
12 exemption in the no cash rule for moneys
13 received pursuant to a court order. The CIV
14 rule actually went further. It also had an
15 exemption for moneys received in settlement of
16 any legal or administrative proceeding. We took
17 those out. It was our sense that those
18 exemptions create some risk and were not
19 necessary, essentially. Similar to the cash
20 transaction rule we maintained the remaining
21 exemptions. We also took out of the -- it's
22 section 6(1) and it's the basic requirement to
23 verify identity; it's the introduction to those
24 rules. It used to provide that lawyers must
25 make reasonable -- take reasonable measures to

1 do these things, this verification. We took out
2 the reasonable measures requirement making it an
3 absolute requirement and we did that
4 notwithstanding a lot of very negative feedback
5 in the consultation, members of the profession
6 saying they needed that exemption or that
7 qualifier and we felt that it was -- it is not
8 unreasonable to expect lawyers to be able to
9 verify the identity of their client and if they
10 cannot do so then they should not be acting.

11 There was a lot of amendments in the body of
12 the rule that are linked to the methods that is
13 entirely a matter of tracking the changes to the
14 federal regulations. We introduced a
15 requirement to inquire into the source of funds.
16 We felt that that was consistent with due
17 diligence obligations and we also in the
18 consultation phase we proposed a mandatory
19 requirement to obtain beneficial ownership
20 information and indeed even following the
21 consultation we maintained that position because
22 there is a bit of a fail-safe as there is in the
23 federal regulations. So if you can't get it
24 then you treat it as high risk and you have to
25 undertake ongoing evaluation of the relationship

1 and ongoing monitoring. Prior to the amendments
2 going to our council, however, we were persuaded
3 that the rule couldn't be complied with because
4 there is no way to verify the information about
5 beneficial ownership. As you know, the
6 federation has been very strongly in -- spoken
7 out very strongly in support of beneficial
8 ownership registries both at the federal and
9 provincial levels, and we said when we
10 introduced that last change to the amendments
11 that we were putting in a reasonable efforts
12 threshold or standard but that we were ready and
13 willing to move to a mandatory requirement when
14 there is a comprehensive way across the country
15 to verify beneficial ownership information.

16 We also tightened up the timing for the
17 verification of organizations, reducing it to
18 30 days from 60, and we introduced an ongoing
19 monitoring obligation.

20 Q Okay. As before, I'd like to take you through a
21 couple of the issues that either were identified
22 and perhaps not introduced or maybe still under
23 ongoing consideration. The first is the
24 verification requirement so that the requirement
25 that lawyers verify the identity of their

1 clients. Currently in the model rule obviously
2 that only applies when a lawyer is retained for
3 the purposes of a financial transaction. Was
4 there any consideration by the federation of
5 extending the requirement to certain other
6 non-financial services, particularly those that
7 may have an elevated money laundering risk such
8 as, for example, the incorporation of a company
9 or the formation of a trust where confirming and
10 verifying the identity of the client may be an
11 important part of the lawyer's gatekeeper
12 function? Was that something that was looked at
13 when examining this rule?

14 A Not at that time. As I said, the rule did then
15 and the amendments were made to continue to
16 track the federal government's regulations in
17 this area and as in federal government's
18 regulations the obligation to verify is
19 triggered by there being financial transactions,
20 whether you are actually doing them or whether
21 you were instructing on them. However, I would
22 say that if we move, as I believe we should
23 ultimately, to a much more risk-based approach,
24 then that's a possibility, but not at that time.
25 We'd not considered that.

1 Q Is that something that is -- you referred to
2 several things being under consideration, and I
3 understand that there is a phase 2 of the
4 working group's examination of these. Could you
5 just briefly explain what that phase 2 is and
6 what the current status of that is?

7 A During the course of the consultation a number
8 of -- during the course of our own work and the
9 course of the consultation a number of issues
10 came up on which we thought we needed more
11 information, more consultation, more research
12 and so forth. So even as we were sort of
13 wrapping up our first round of -- our first
14 review and proposed amendments and ultimately
15 moving the amendments forward, we had decided to
16 undertake a second review. We also knew that
17 there would be more amendments to federal
18 regulations coming down the pike. So we decided
19 then to move on to a second phase of the review
20 once we got through some of our initial work.
21 So we are focusing in our discussion here today
22 on the amendments to the rules. And this was a
23 very important part of our work but by no means
24 even half of it because we've also spent a lot
25 of time looking at educational materials and

1 best practices for law societies. So once we
2 got a couple of those initial documents
3 launched, you know, we had the rule amendments
4 and we got those initial documents launched, we
5 returned to looking at potential amendments.
6 That work is still ongoing, informed in part by
7 the feedback that we got from the department of
8 finance, from law societies' experience, and
9 this was one of the things that we wanted to
10 give some time for to see what the experience
11 was as the rule amendments were implemented in
12 the law societies and we began to have more
13 experience with them. We wanted to see what was
14 happening on the beneficial ownership front and
15 whether the governments in Canada would move in
16 that direction and what that would say for what
17 we might do. But we are in the middle of
18 another review now. Again, because he is really
19 the guru of the rules, Jim Varro is heading that
20 work up, and I can tell you that that work
21 includes we are looking at -- actually I have
22 notes some place, but I don't see them here. We
23 are looking at politically exposed persons,
24 we're looking at enhanced monitoring and highly
25 risk situations are when certain things are

1 discovered through your ongoing monitoring. I
2 believe everything plus everything that was on
3 the list that is in that presentation from the
4 government made about the regulations, the one
5 that's at the end of that presentation.

6 Q And you are referring there to the June 2019
7 presentation --

8 A Yes.

9 Q -- that was presented by Mr. Ngo?

10 A That's right.

11 Q We did look at that yesterday.

12 A So we're looking at all of those matters as well
13 as some of the things I mentioned in the context
14 of the cash transactions rule that we discussed
15 a few minutes ago. All of those things are
16 currently under review. We are further along
17 with some of them. We're doing some on the
18 ground consultation in some areas to get more
19 information. We have a couple of issues that we
20 may want to raise to get some feedback from the
21 department of finance before we move forward and
22 so forth, so that's the status of that at the
23 moment.

24 Q Well, one of the topics that you mentioned there
25 was one I had hoped to touch on as well which

1 was politically exposed persons and heads of
2 international organizations, and I think that
3 PEP and HIOs are the accepted acronyms for
4 those, and I think you indicated that that is an
5 area that is under consideration as part of the
6 phase 2. I think you understand that the
7 current federal regulations under the PCMLTFA do
8 require certain reporting entities to determine
9 whether a person is a PEP or HIO or related or
10 otherwise associated to one and where that's the
11 case to engage in enhanced due diligence,
12 including confirming the source of the person's
13 wealth; is that right?

14 A Yes, that's my understanding and we are looking
15 at all of those things. We are looking at
16 source of wealth more broadly so not only in
17 regards to politically exposed persons, and the
18 one I forgot to mention was the compliance.
19 That is another area that we are looking at.

20 Q Okay. And just for reference, Madam Registrar
21 if you could pull up FLSC14. That's 000014.
22 This is a CIV subgroup memo April 24th, 2019.
23 It's a report on CIV issues review and there are
24 a number of -- you'll see in the first
25 paragraph a number of specific issues and one of

1 the issues that's identified is issues relating
2 to politically exposed persons, and there's also
3 number 4 there is issues related to
4 cryptocurrency. I don't intend to take you
5 through all those, but are issues related to
6 cryptocurrency also something that's under
7 current consideration by the federation?

8 A We're looking at electronic fund transfers.
9 Nobody asked us to, but we're looking at that
10 anyway. Source of funds, source of wealth, risk
11 assessment, compliance measures, virtual
12 currencies, the exemption for cash, cash
13 exemption for professional fees, politically
14 exposed persons, trustees of widely held or
15 publicly traded trusts and enhanced risk
16 assessment is the current list that we are
17 looking at. This issue that you see in
18 paragraph 1 there of the Indian bands is one
19 that we've been wrestling with for a number
20 of years and we would like to sit that down and
21 talk that one over with the department of
22 finance before we move forward on that.

23 MR. ISAAC: If I could mark this, please, as the next
24 exhibit.

25 THE COMMISSIONER: That will be 210.

1 THE REGISTRAR: Exhibit 210.

2 EXHIBIT 210: Federation of Law Societies of
3 Canada - Memorandum from CIV Subgroup AML
4 Working Group to AML Working Group, re Report
5 On CIV Issues Review - April 24, 2019

6 MR. ISAAC:

7 Q If you go to page 13 of this document, there's a
8 memo that was prepared here by Jeanette McPhee
9 of the Law Society of British Columbia and
10 another person dated January 18, 2019, about
11 politically exposed persons and the heads of
12 international organizations. And this memo
13 identifies if you go to page -- sorry, I think
14 it's page 14 there's a reference in the memo to
15 certain practical challenges about actually
16 conducting PEP and HIO checks particularly for
17 lawyers in Canada, and I'm referring in
18 particular to page 17, please, of this document.
19 There's a paragraph that begins "the practical
20 issue remains." I'm just wondering if you might
21 comment on what the current practical challenges
22 are for the legal profession in implementing PEP
23 and HIO checks and whether there are any sort of
24 broader reforms that might be implemented that
25 would assist lawyers in conducting and

1 incorporating those sorts of enhanced know your
2 client checks into their due diligence process.

3 A Broader measures implemented not necessarily by
4 the law societies, I take it, is your question.

5 Q Yes. Not limited to the law societies. Are
6 there broader reforms that would assist. I see
7 here there's reference to the challenges of the
8 availability of PEP databases and the
9 availability of that information, and my
10 question is are there both at the law societies
11 level but also just more broadly that would
12 assist law societies and lawyers implementing
13 these sorts of important verification steps into
14 their processes?

15 A There's no question. As is the case with
16 beneficial ownership, in our federal
17 government's regulations we have requirements
18 imposed on all kind of reporting entities. They
19 simply can't be complied with because the
20 information is not available and this is another
21 area. So to have those provisions and to
22 provide no means for the reporting entities to
23 comply, or in our case to have lawyers and
24 Quebec notaries have no means to comply, just
25 doesn't make for a meaningful rule. So without

1 being able to be specific I'm not directly
2 involved in this work. I don't believe there's
3 been a lot of discussion around at least a
4 broader policy question about what we might
5 exhort government to do, but it's evident that
6 to be meaningful we need to have publicly
7 available information on politically exposed
8 persons. To impose a requirement that people
9 go to private provider, they are all kind of
10 issues with it. First of all there's cost,
11 which is not within the control of lawyers,
12 right, with a private provider. Second of all
13 there's reliability of the information. How
14 reliable is it, who is checking it, where does
15 it come from, what are the protocols for
16 maintaining it and so on. Which those kinds of
17 issues are much better addressed in public
18 registries. Whether they are public in the
19 sense that absolutely everybody can get access
20 or whether they are public in the sense that
21 they are available to law enforcement and
22 reporting entities, those are important policy
23 questions to be discussed. But certainly if you
24 want people to get information and use that
25 information to do things like assess risk, then

1 the information must be made available and our
2 position would be that that is the
3 responsibility of government to ensure that that
4 information is available.

5 Q I think you indicated there was a similar
6 rationale for the federation support for the
7 implementation of corporate beneficial ownership
8 registries as well. Is that a related need for
9 the ability to have access to the information
10 that might be useful for enhanced due diligence
11 on those that lawyers take on as client or do
12 business with?

13 A Yes. Absolutely. And in fact not only to do
14 enhanced due diligence but to have a rule that
15 we can make mandatory with no exceptions that
16 can in fact be complied with. Rather than
17 having a rule that appears to be mandatory but
18 has an out which is the state of federal
19 regulations which it has to have because it
20 can't be complied with. So we are very much in
21 favour of this. We are very much of the view
22 that while -- you know, Canada is a country that
23 has historically made policy decisions to permit
24 sort of an opaqueness in corporations, in
25 corporate ownership. That is a policy decision

1 which favours certain interests. I think it's
2 becoming evident as financial crime perhaps
3 becomes more sophisticated or we simply become
4 more knowledgeable about it that that is a
5 policy decision worth revisiting. And we would
6 very much support that as our organization has
7 taken that position.

8 Q I don't intend to take you through this last of
9 the three rules in great detail, but the third
10 rule that emanated out of this review process
11 was the new trust accounting model rule.

12 MR. ISAAC: And, Madam Registrar, if we could bring
13 up FLSC34, please.

14 Q If you could just confirm that that is the trust
15 accounting rule.

16 A Yes.

17 MR. ISAAC: Okay. If we could mark that, please, as
18 the next exhibit.

19 THE COMMISSIONER: All right. Did we mark the most
20 recent one?

21 THE REGISTRAR: We marked the last one, but we
22 haven't marked the one previous to the last one
23 which is FLSC000038.

24 THE COMMISSIONER: Right. Let's mark 38 first as 211
25 and then model trust accounting rule at 212.

1 THE REGISTRAR: Exhibit 212, yes.

2 EXHIBIT 211: Changes to the Model Rules on
3 Money Laundering and Terrorist Financing, 2018,
4 one-page summary

5 EXHIBIT 212: Federation of Law Societies of
6 Canada - Model Trust Accounting Rule

7 MR. ISAAC:

8 Q In terms of the reference to what the impetus
9 and rationale for this rule was, if we could
10 pull up FLSC19, please. And this is the -- I
11 believe we're looking at the consultation report
12 again and there's a description here at page 13,
13 paragraphs 50 to 54 of the document describing
14 what the rationale and impetus for the rule was.
15 Would it be correct to say that through the
16 course of the review the issue of trust accounts
17 and trust accounts potentially being used where
18 legal services were not involved was an area of
19 concern that was identified through the course
20 of the review?

21 A Yes. That's correct. There were a number of
22 reasons. One, as I said, we started our review
23 by standing back and asking whether the rules
24 were appropriately robust given the goal. And
25 we were aware and I don't really remember

1 exactly what the overlap is, but there was a
2 case in British Columbia of a lawyer who was
3 prosecuted and successfully even in the absence
4 of such a rule for essentially permitting his
5 trust account to be used as a bank. That is
6 something that -- that's an issue that has been
7 raised in other context, there's lots of
8 literature about it, lots of references to it in
9 international materials, and we very much of the
10 view, as I mentioned earlier, that money in and
11 out of trust accounts should be related strictly
12 to the provision of legal services. There is no
13 other reason for money to be flowing through a
14 lawyer's trust account. So that is essentially
15 the rationale. This is an area we felt we
16 could -- as the report just above the
17 paragraphs that is on the screen right now
18 indicates, some law societies already had such
19 rules and so we had good experience as well as
20 with the case going through the process in
21 British Columbia, the Gurney case. We had a
22 good reminder of the value of such a rule. Even
23 though as I've said, the law society was
24 successful in prosecuting Mr. Gurney, even in
25 the absence of such a rule. And that was of

1 course based on the other broad suite of rules
2 that I've referred to several times already.

3 Q Now, this model rules obviously places
4 restrictions on the ability of lawyers to
5 deposit funds, move funds through their trust
6 accounts except where they are directly in
7 relation to legal services. Are you aware of
8 any restrictions by member -- by law societies
9 on the ability of lawyers to deposit funds that
10 are not perceived in relation to perhaps
11 traditional legal services outside of the
12 solicitor client relationship into not their
13 trust account but possibly their business or
14 other bank accounts and whether any of the
15 member law societies have visibility on that
16 type of potential conduct?

17 A Well, the law societies have the capacity to
18 audit all lawyers accounts, not just the trust
19 accounts. So there is visibility. In terms of
20 rules, well, there are as I -- there are all
21 kind of rules relating to trust accounts. This
22 is quite a voluminous area of regulation by law
23 societies and I'm not going to try to go through
24 them all in detail. But there are rules about
25 money, when money has to be deposited into trust

1 account, when it can be taken out, what money
2 can go directly into a general account as
3 opposed to a trust account and so forth. Every
4 law society in the country has rules that speak
5 directly to that. So that's one area of rules.

6 The other area of rules that exist are
7 something I referred to a little while ago and
8 that is the case of lawyers that are engaged in
9 representative capacity work, a number of law
10 societies used to -- I'm not certain they've all
11 moved away from this yet, but everybody is in
12 the process of doing so -- require lawyers to
13 deposit representative capacity funds, money
14 related to that into their trust account. The
15 purpose was to protect the public. It was to
16 provide, to ensure that the same level of
17 protection was provided when a lawyer was doing
18 that kind of work as when they were providing
19 legal services. That, however, is contrary to
20 this -- and the texts that you see here is not
21 the final rule, so when I say "this rule," I
22 mean the new trust accounting rule. We realized
23 that five law societies had rules that they had
24 to reconcile their existing rule with the new
25 trust accounting rule. And the recommendation

1 after some work that we did internally in a
2 small group of us was that the law societies
3 that had rules requiring or permitting lawyers
4 to deposit representative capacity funds into
5 their trust accounts should change the rules so
6 that was not provided but that they should all
7 ensure that they had rules articulating the law
8 societies' capacity to have oversight of those
9 funds and that is the public protection matter.
10 This is a complicated area and there are -- you
11 know, some representative capacity work is
12 covered by liability insurance, for example,
13 when it flows from the work that you do as a
14 lawyer and so forth, so this is a scenario which
15 in which law societies are quite involved and
16 that continues. But there is a change in the
17 approach so that we can have a strict rule on
18 trust accounts.

19 MR. ISAAC: If we could mark this please as the next
20 exhibit.

21 THE COMMISSIONER: All right. That will be marked as
22 213.

23 THE REGISTRAR: This document 000019 has been marked
24 yesterday. Exhibit 208.

25 MR. ISAAC: Thank you.

1 THE COMMISSIONER: Thank you.

2 MR. ISAAC:

3 Q Ms. Wilson, I'd like to -- we looked at the
4 three significant rules that were implemented.
5 A related, obviously, question is how the rules
6 are being enforced, how breaches of the rules
7 are detected and what is done once they are.
8 Did the working group, the ML working group look
9 at that question as part of its work?

10 A Yes. First we talked earlier about the survey
11 that was done. That was really a fact gathering
12 exercise not a guidance providing exercise, but
13 it was the foundation of work. We as part of
14 this -- I referred to before that reviewing the
15 rules while very significant was hardly the only
16 thing that our anti-money laundering terrorist
17 financing working group has been involved in.
18 We also created two very comprehensive
19 documents. One is guidance to the legal
20 profession. It is available on our website and
21 it's been made available to all of the law
22 societies to share with the lawyers in their
23 jurisdictions as they see fit, but my
24 understanding is that it's available also on
25 their websites. The second document we prepared

1 is a best practices guide for law societies. It
2 speaks directly to things like audit programs
3 frequency of audit, the importance of combining
4 random audits with risk-based audits, targeted
5 audits; things that you should look at, goes
6 right down to the level of describing what you
7 should be looking at when you go into a firm.
8 Now, of course law societies have all kind of
9 guidance and training for auditors when it comes
10 to the purely financial side of auditing. The
11 introduction of the client identification
12 verification rules introduced a whole new area
13 for law society auditors. It's no longer a
14 matter of looking at financial accounts or
15 looking primarily at financial accounts. It's
16 now a matter of pulling client files and looking
17 at the information that the lawyer has collected
18 on the client, have they complied with the rule,
19 but also does what they have does it make sense
20 in the context of the work that the lawyer is
21 doing for the client and what they know about
22 the client and so forth. So the best practices
23 guide provides, as its name suggests, guidance
24 to the law societies on all of those kinds of
25 things, including training for auditors to

1 ensure familiarity with money laundering risks
2 and so forth so that they can not only spot it
3 but they can assist in educating members of the
4 profession when they conduct audits.

5 Q You did mention several documents and I would
6 just like to introduce those as well. If we
7 could bring up FLSC35. This is the guidance to
8 the legal profession. So this is the public
9 facing version that goes out to the legal
10 profession regarding AML; is that right?

11 A Yes. It's one of a series of documents we have
12 now produced, but it's the first.

13 MR. ISAAC: If we could mark that please as the next
14 exhibit.

15 THE COMMISSIONER: 213.

16 THE REGISTRAR: Exhibit 213.

17 **EXHIBIT 213: Federation of Law Societies of**
18 **Canada - Guidance to the Legal Profession -**
19 **December 14, 2018**

20 MR. ISAAC: The next document is "Risk Advisories to
21 the Legal Profession." That's FLSC36, please.

22 Q I think you mentioned earlier one of the areas
23 where the federation is moving forward with more
24 of a risk-based approach is primarily with
25 respect to education. Is this a part of that?

1 A Yes, I think it's really important to emphasize
2 that in the course of our work we concluded that
3 to have an effective regime rules might be the
4 foundation of the regime but much more is
5 required. So we identified education of the
6 profession as probably the single most important
7 thing that we should be doing, and the risk
8 advisory document that you see there and the
9 document that preceded it are examples of
10 educational materials. So this is both --
11 demonstrates our focus on risk but also our
12 commitment to providing materials that will
13 elevate the level of knowledge and understanding
14 of the members of the legal profession of the
15 risks. Not at a general level. You know, so
16 much of what you read at a sort of general level
17 are press law as a high risk. It's not helpful
18 to a practitioner to hear that. What a
19 practitioner needs to know is what are the
20 risks, in what context, what do they look like,
21 how will I know when I see it. This is one of
22 the documents that we prepared with that in
23 mind.

24 Q Okay. I think this along with one more document
25 that I'll ask to have both of them marked as

1 exhibits. And if we could bring up FLSC37.
2 This is a set of risk assessment case studies
3 and this is another part of that risk education
4 component; is that right, Ms. Wilson?

5 A Yes, it is.

6 MR. ISAAC: Okay. If we could please mark those as
7 the next exhibits, please.

8 THE COMMISSIONER: 214 and 215 respectively.

9 THE REGISTRAR: Yes. Exhibit 214 and 215.

10 **EXHIBIT 214: Federation of Law Societies of**
11 **Canada - Risk advisories to the legal**
12 **profession - December 2019**

13 **EXHIBIT 215: Federation of Law Societies of**
14 **Canada - Risk Assessment Case Studies for the**
15 **Legal Profession - February 2020**

16 MR. ISAAC:

17 Q Beyond the question of education when we look to
18 the question of appropriate sanctions has the
19 federation looked at whether there is a need
20 potentially for strengthened penalties, for
21 example administrative penalties, to supplement
22 the disciplinary consequences that might apply
23 to AML rule violations?

24 A Law societies have pretty extensive power in
25 that regard, as I'm sure you are aware. They

1 can suspend a lawyer's licence. They can disbar
2 a lawyer. That is the capital punishment of
3 legal regulation, and that's quite profound.
4 The law societies powers are of course contained
5 in their enabling statutes. So we are still at
6 the stage of wanting to be able to gather better
7 information on the enforcement of the rules and
8 what is being done when there are breaches at
9 whatever end of the spectrum. The breach may be
10 a minor breach to a serious breach. That will I
11 think inform our sense of whether or not law
12 societies have the sanction options at their
13 disposal. But I think it is important to
14 understand that their powers in that regard are
15 pretty extensive already.

16 MR. ISAAC: If you could please bring up FLSC20.

17 Q This is a document, the title is "Feedback From
18 Consultation on the AMLTF Model Rules." You see
19 that?

20 A I can see that.

21 Q If we go to page 2, please. In the middle of
22 the page there is a comment under the heading
23 "Enforcement Strategies" and it says:

24 "There may be other avenue for
25 consideration through the rules to improve

1 a regulatory response on the issues of
2 cash transaction and client identification
3 of verification in an effort to reduce
4 money laundering and terrorist financing
5 through the legal profession. For
6 example, we believe some consideration
7 should be given to the use of
8 administrative penalties in addition to
9 disciplinary consequences for rule
10 violations. We have given thought to what
11 this might look like and would like the
12 opportunity to share those thoughts with
13 you as you move forward with the best
14 practices for enforcement."

15 And then this seems to be attributed to the Law
16 Society of British Columbia. You see that? Can
17 you explain what that was a reference to in the
18 context of this and is that something that has
19 been discussed further at the federation level?

20 A As I said, we are at the beginning of our work
21 in this area. And when I say at the beginning,
22 you know, it's not only our working group.
23 There is a group of what we call a
24 counterpart group of discipline administrators
25 from across the country who meet on a regular

1 basis about a whole variety of things and we
2 have just begun our conversations with them
3 about this whole area of enforcement and
4 penalties will be part of that. My
5 understanding is that there is a sense that when
6 the no cash as we called it then, the no cash
7 rule was first introduced, it was new. Took
8 members of the profession time to get used to
9 that and in the early days at least I think that
10 it was the case that some law societies took the
11 position that unless there was an egregious
12 breach, a large sum of money in questionable
13 circumstances, they were not inclined to
14 prosecute people through a disciplinary process
15 for minor or what might have been inadvertent
16 breaches or breaches that were attributable to a
17 lack of full understanding of the obligations
18 under the then new rules. And I think there are
19 some who think that it may still be of value to
20 be able to impose some sort of a penalty short
21 of discipline in situations where there is a
22 breach. That might be what we call an innocent
23 breach. In other words, there's no evidence
24 that it's for an improper purpose. You know, I
25 took \$9,000. I forgot to add one cash deposit I

1 had. Whatever it was. A sense that it's no
2 longer appropriate to say yes, okay, we
3 understand it was inadvertent; we are not going
4 to do anything. So administrative penalties
5 could play a role there. On the other hand, we
6 also think that enforcement of the anti-money
7 laundering rules is critical. It's fine to have
8 rule, but if you don't enforce them it's not
9 meaningful and that we've been at this long
10 enough that often it is a disciplinary response
11 is what will be warranted. So I think it's fair
12 to say that everything will be on the table, but
13 we are not looking for enforcement light.
14 That's not where we are starting from. We think
15 that enforcement is -- I mean, it's the carrot,
16 right, and education is in a way in that analogy
17 the stick. We want to educate members of the
18 profession so they don't breach the rules. In
19 our experience -- and this didn't just about
20 anti-money laundering rules, this is true across
21 all disciplinary context in law societies is a
22 tiny minority of the lawyers who are the bad
23 apples, a tiny minority of lawyers who
24 deliberately breach the rules. The rules are
25 there. But it's like the criminal law. The

1 criminals breach it regardless of the law and
2 there are a handful of lawyers who are like that
3 too. What we want to focus on is the great
4 majority of lawyers who want to comply, who want
5 to do the right thing, who want to understand a
6 risk when it's in front of them, who want to
7 know what it looks like, what the indicia are
8 and how to avoid it and how to respond, and so
9 that educational piece is critical to having a
10 successful robust and effective regulatory
11 regime run by the law societies. But discipline
12 is part of it too and we are not going to shy
13 away from that, but we are just at the beginning
14 stages of looking at are there tweaks that we
15 should make, are there new powers that should
16 exist, are there different guidelines that
17 should be developed. That's really in the
18 nascent stages.

19 Q Thank you. I'd like to move back to the future
20 if you will, back to the engagement with the
21 joint federal working group that we touched on
22 earlier today. And I understand there have been
23 three meetings I believe thus far as part of
24 that working group. It would be fair to say
25 that at least at this point that joint working

1 group of the federal government has largely been
2 a process of information sharing at a rather
3 high level; is that fair?

4 A Yes. And I think that's one of its goals.
5 There is a great deal of opportunity here for
6 educating the respective parties. That is what
7 you've seen. That's the purpose of the
8 presentations that you discussed yesterday with
9 other witnesses. That is a purpose of the
10 presentations that we have made to the
11 department of finance and the other -- there are
12 representatives from the Department of Justice
13 who sit on this committee as well -- about our
14 audit processes. And just so that you know,
15 although those presentations that we made were
16 made about the processes that exist in specific
17 law societies, the Law Society of British
18 Columbia and the Law Society of Ontario, they
19 are illustrative of what happens across the
20 country and of course we have representatives on
21 our joint working group from the law societies
22 of Ontario and British Columbia, so hence our
23 resort to them for that education.

24 But education is and information sharing
25 more broadly is a very important part of this

1 working group, as well as I think a certain --
2 I'm not sure what the right word is; I was going
3 to say accountability, but it's not exactly what
4 I mean, but we are interested in demonstrating
5 to the government what we are doing and
6 demonstrating to them that we are responsive to
7 the realities that exists and also the
8 information that we receive.

9 Q In terms of next steps at least from the
10 federation's perspective with the working group
11 and what might be demonstrated next, do you have
12 a sense of for example were there to be a next
13 meeting of the joint working group what might be
14 demonstrated in terms of progress with the areas
15 that were identified, for example in the
16 department of finance presentation that we
17 referred to earlier, the implementation of some
18 of the risk-based measures? Is there likely to
19 be any update on that in the coming year?

20 A We have a meeting scheduled for early next month
21 and to the best of my recollection we will talk
22 and one of the things that is on the agenda is
23 that we will talk about the progress that we are
24 making in the review. So it will be an
25 opportunity to describe for the department of

1 finance what we are looking at in terms of some
2 of the areas we referred to earlier, compliance
3 programs, politically exposed persons,
4 et cetera, et cetera. We are waiting for
5 presentation from the RCMP that will look at
6 some of their experience and we are interested
7 in real information, not typologies that come
8 from research done in the 1990s. This has been
9 one of the our frustrations is that a great deal
10 of the information that is still relied on,
11 still talked about is 25 and 30 years old. So
12 we are interested in more current information.
13 We anticipate that at some point in the future,
14 likely when we can meet in person because it's a
15 more appropriate context to do that, that we'll
16 have presentation from the RCMP on that. As I
17 mentioned we have some issues we'd like to chat
18 with the department about, the department of
19 finance, the question of how to deal with First
20 Nations in our model rule is a real one that we
21 would like to get that is not addressed in the
22 federal regulations, so we would like to talk
23 about that. That's an important one. We are an
24 organization very much committed to
25 reconciliation. We think it's important this is

1 something we address in our rule, but it is a
2 complex topic so that is not specifically on the
3 agenda for the next meeting because we are not
4 quite ready to have that conversation yet. We
5 want to get some more information together. But
6 I see that going forward. We are also working
7 on -- I mentioned before that we've done a
8 number of different things in the educational
9 front and I can tell you that in addition to the
10 documents that you've entered as exhibits we
11 have created I think it's three additional
12 documents, two which focus -- well, they're all
13 directed at the rules, largely CIV rules. So
14 one is looking at the use of agents. There was
15 some confusion about that and in fact the
16 governments, the department of finance's
17 comments on our rules I think also had some of
18 that confusion, so we've put out some additional
19 guidance there. We've also put out additional
20 guidance on the monitoring obligations that were
21 introduced in October 2018. And finally we've
22 done a really comprehensive document on -- sort
23 of a FAQs that goes through all kinds of things
24 that can arise in the context of complying with
25 the rules.

1 Of much more interest from our
2 perspective -- I just want to say this because
3 this is something we will be talking to the
4 department of finance about -- is the
5 development of online education tool for -- that
6 will be made available to members of the
7 profession that will look less at compliance
8 with the rules, although no doubt it will cover
9 that, and more at understanding what money
10 laundering is, understanding what it looks like,
11 understanding how it might present in the
12 practice of law, identifying risks,
13 understanding risks, how to respond to risks,
14 understanding the broader context of rules and
15 laws that already apply. Rules of professional
16 conduct, the provisions in the *Criminal Code* and
17 so forth. So we are quite excited about that
18 and we will engage the department as we move
19 forward in the development of those modules.
20 That's work that is in the business plan stage
21 of development.

22 Q The last lines of questions that I'd like to
23 turn to now are sort of forward looking and some
24 of them address the recommendations that were
25 made in relation to the legal profession by

1 Dr. German and Professor Maloney who were the
2 authors of what are referred to as our terms of
3 reference reports. I'd like to address with you
4 the federation's view of both the necessity as
5 well as the feasibility of some of those
6 recommendations. So both Dr. German and
7 Professor Maloney made recommendations that
8 legal professionals potentially be required to
9 report suspicious transactions to a third party,
10 not FINTRAC, but a third party blind, possibly
11 the law society, and that is similar to models
12 that exist in some other international
13 jurisdictions such as France and otherwise.
14 What is the federation's perspective on both the
15 necessity and feasibility of that type of
16 recommendation?

17 A So let me start by saying that -- a couple of
18 things, a couple of foundational pieces in the
19 answer to that question. One is that in our
20 view regulation to address the risks of money
21 laundering and the finance of terrorism that can
22 arise in the practice of law have to meet
23 certain threshold requirements. They must
24 comply with the principles of fundamental
25 justice that guide our system of justice in

1 Canada that are compliant with our constitution,
2 the constitution that exists here. That is one
3 of the things that makes Canada unique as a
4 country, but it also makes Canada unique in the
5 context of regulating to address the risks that
6 we've been discussing.

7 I find the focus on suspicious transaction
8 reporting interesting for a couple of reasons.
9 First of all, I think there is a misapprehension
10 that's certainly evident in Peter German's
11 report and that is that the Supreme Court of
12 Canada in its 2015 case was dealing with
13 suspicious transaction reporting and I say that
14 because quite a lot has been made in various
15 context of the supreme court's suggestion that
16 there may be left open the door that there could
17 be constitutionally compliant ways of bringing
18 the legal profession into the regime. When you
19 think about that it is critical to understand
20 what was and what was not before the court. So
21 what was before the court were the -- and I
22 mentioned this yesterday -- were the
23 verification regulations and associated
24 provisions of the legislation. What wasn't
25 before the court was suspicious transaction

1 reporting. So understanding Justice Cromwell's
2 comment about the potential for constitutionally
3 compliant legislation has to take that into
4 account, and I stress that because it's very
5 difficult, particularly when you look at the
6 language of the federation case and what the
7 supreme court said, it's very difficult to
8 imagine a regime in which suspicious transaction
9 reporting can be done without violating
10 solicitor/client privilege and the duty of
11 commitment to the client's cause. And if it's
12 going to violate those rights, it must be as
13 minimally as possible and it must be absolutely
14 necessary. And I don't think there's any
15 evidence of that that's possible, that either of
16 those thresholds can be met.

17 So you have two reports that take different
18 tact on this issue. Peter German's suggestion,
19 even though he cites some of the jurisprudence
20 that goes against what he is proposing, suggests
21 that there are some information about lawyer's
22 trust accounts that can be revealed without
23 violating privilege. And while it may be that
24 not everything related to lawyers' accounting or
25 trust accounts is privileged, it has been

1 recognized, and this is not new jurisprudence;
2 it goes back to whenever the *Foster Wheeler* case
3 was decided, that recognizes that there is
4 inherently going to be privileged information in
5 those records. So that is the starting point.
6 So in response to the suggestion that accounting
7 records and trust accounts that much information
8 could be provided which wouldn't breach
9 privilege, that's not at all consistent with the
10 jurisprudence from the Supreme Court of Canada.
11 The simple fact of someone being your client,
12 the name of a client, which Peter German
13 recommends is something that could be released,
14 is in fact in many contexts going to be
15 privileged according to the Supreme Court of
16 Canada.

17 So I think that then takes us to Professor
18 Maloney's suggestion of reporting to law
19 societies or some other body, and I'm going to
20 be candid and tell you that I have really
21 struggled with this suggestion, struggled to
22 understand what it would accomplish. So as I
23 understand the proposal, is that lawyers would
24 if there was a suspicious transaction report
25 that suspicious transaction to the law society

1 and then withdraw. So what is not clear is
2 whether the lawyer is going to conduct the
3 transaction or not under that proposal and if
4 the idea is that they could conduct the
5 transaction, we say that is absolutely
6 antithetical to the rule of lawyers in our
7 society and to the duty they owe to the
8 administration of justice. It is out of the
9 question to imagine a scheme that would permit
10 lawyers to facilitate something that they think
11 is probably illegal and then get it off the
12 record. So perhaps that is not what is
13 suggested. Perhaps upon further examination we
14 would see the idea is no, no, no, they wouldn't
15 engage in the transaction, so the transaction
16 doesn't happen as far as that lawyer is
17 concerned. They report their suspicions to the
18 law society which according to the
19 recommendation, the law society then does
20 nothing with. They don't do anything with it
21 with regards to that lawyer. They don't do
22 that. But perhaps if there is information about
23 another lawyer they could then go to law
24 enforcement, so investigate and go to the law
25 enforcement. There are a lot of things that are

1 assumed in that recommendation. The assumption
2 is that if there is another lawyer and they
3 haven't reported and they haven't got off the
4 record, that they are inevitably as a result
5 involved in the commission of assistance with or
6 facilitation of a criminal act or something
7 illegal, that's not evident. We don't know
8 that. We don't know that without investigation.
9 It may very well be that upon further
10 investigation we discover that that lawyer just
11 isn't as far along in the process. They are
12 perhaps further down the chain in the
13 transaction. They haven't done anything yet and
14 they are still trying to figure out what is
15 going on trying to do their risk assessment. At
16 the end of the day, you know, there's a lot of
17 dialogue in spite of what some other sources say
18 about the value of suspicious transaction
19 reports. There's a lot of dialogue about how
20 effective they are and what is done with them,
21 and I think you have in the things that I've
22 read about the situation in British Columbia you
23 have evidence of that in the scheme that exists,
24 for example the experience with the casinos.
25 But to ask lawyers to do that to report in those

1 circumstances raises questions about what the
2 value will be at the end of the day. I do want
3 to say, however, take this opportunity to say
4 that, you know, when we talked yesterday about
5 solicitor/client privilege and whether or not
6 that makes lawyers an attractive vehicle for
7 would-be money launders, you know, it's
8 important to identify that communications in
9 furtherance of a criminal offence are not in
10 fact privileged. That remains a fact, something
11 we are very supportive of. We believe that
12 lawyers that commit crimes should be prosecuted
13 for those crimes, that shouldn't only be up to
14 law societies to regulate, they should they be
15 prosecuted if they commit crimes. Lawyers are
16 no more above the criminal law than anybody
17 else. And what we would say is that fortunately
18 that's actually a small number. So I'm not
19 seeing in these proposals things that are either
20 in the case of German's approach clearly
21 compliant with our constitution or in the case
22 of Professor Maloney's approach things that will
23 create a meaningful -- that will meaningfully
24 advance the fight against money laundering. We
25 already require lawyers to get it off the record

1 if they think there's something wrong. That is
2 a rule. That has been a rule for a very long
3 time and predates all of these anti-money
4 laundering regulations. It simply has
5 particular application in this context.

6 Q So that aspect of the recommendations in the
7 Maloney and German reports concerned information
8 flowing from the legal profession up to either
9 government or a third party blind. I'd like to
10 address a related recommendation by Professor
11 Maloney that the federal regime be amended to
12 authorize FINTRAC to provide information to
13 specified regulators that might include, for
14 example, provincial law societies, so
15 essentially putting law societies in the
16 position, because obviously information flows
17 both ways and part of the challenge with money
18 laundering can be connecting the dots. So
19 providing law societies with the evidence that
20 they might need in terms of disclosures that
21 might inform their or initiate investigations.
22 What is your perspective again on that proposal
23 and is it something that the federation has
24 discussed with the federal government as a
25 potential avenue to pursue?

1 A As I mentioned a short while ago, we are very
2 interested in information and education, and
3 that extends to specific information. So right
4 now in our conversations with the federal
5 government we are getting general information.
6 Not typologies. It's useful, it's definitely
7 useful. Information on risk, et cetera. What
8 is missing from that piece is information about
9 specific circumstances that law societies might
10 be able to do something about. So right now
11 outside of British Columbia there is no sharing
12 really between, say, law enforcement and the law
13 societies, that direction. We've discussed this
14 in the joint working group with the federal
15 government. I think it's fair to say there are
16 concerns about, you know, law enforcement
17 tipping their hand, about confidentiality, the
18 need to hold information close in the early
19 stages of an investigation and so on, and we
20 understand all of that. That makes complete
21 sense to us. As Gurprit Bains said in what one
22 of the meetings to the government on that point,
23 however, even a name gives a law society
24 something to go on. Even the suggestion or the
25 question have you looked at lawyer X without any

1 of the details is helpful because as I've said
2 on many occasions in the last two days the power
3 of law societies to go in and look at what
4 lawyers are doing are extensive. My
5 understanding is that there is more
6 communication in that regard in
7 British Columbia. It's not present outside of
8 British Columbia and we are very interested in
9 that kind of exchange of information. We think
10 that would be valuable. And it would go to our
11 belief and request that the government and law
12 enforcement recognize what law societies are
13 doing and trying to do and recognize that like
14 other agencies they are serious about protecting
15 the public interest and serious about rooting
16 out the wrongdoers who may exist in the
17 profession. Information that would assist in
18 that regard would always be welcome.

19 MR. ISAAC: Thank you. Those are all of my questions
20 for the witness, Mr. Commissioner.

21 THE COMMISSIONER: Thank you, MR. Isaac.

22 THE REGISTRAR: Sorry, Mr. Commissioner, I wonder if
23 MR. Isaac would like to mark this
24 document 000020 as an exhibit.

25 MR. ISAAC: Thank you, Madam Registrar. Yes, he

1 would.

2 THE REGISTRAR: Thank you. So the next one will be
3 216, Mr. Commissioner.

4 THE COMMISSIONER: Thank you, Madam Registrar.

5 **EXHIBIT 216: Thematic summary of Feedback from**
6 **Consultation on 2018 AMLTF Model Rules**
7 **amendments**

8 THE COMMISSIONER: Right. Ms. George, on behalf of
9 the Law Society of BC has been allocated
10 20 minutes. Ms. George, do you wish to commence
11 now or take the break first?

12 MS. GEORGE: I'm fine either way. Maybe if
13 Ms. Wilson has a view. I'm fine to begin now.

14 THE COMMISSIONER: Ms. Wilson, would you like a
15 break?

16 THE WITNESS: I wouldn't mind a very brief break if
17 that's possible.

18 THE COMMISSIONER: No, that's perfectly fine. I
19 think we will take our normal break of
20 15 minutes at this point. Thank you.

21 THE REGISTRAR: This hearing is adjourned for a
22 15-minute recess until 11:32 a.m. Please mute
23 your mic and turn off your video. Thank you.

24 **(WITNESS STOOD DOWN)**

25 **(PROCEEDINGS ADJOURNED AT 11:17 A.M.)**

1 **(PROCEEDINGS RECONVENED AT 11:31 A.M.)**

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

4 **FREDERICA WILSON, a**
5 **witness for the**
6 **commission, recalled.**

7 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
8 Ms. George on behalf of the Law Society of
9 British Columbia who has been allocated
10 20 minutes.

11 MS. GEORGE: Thank you, Mr. Commissioner.

12 **EXAMINATION BY MS. GEORGE:**

13 Q Good morning, Ms. Wilson, or perhaps afternoon
14 for you. As noted my name is Catherine George
15 and I'm counsel for the Law Society of British
16 Columbia. I won't be taking up too much of your
17 time today. Certainly not the 20 minutes. I
18 have a couple of brief followup questions based
19 on your testimony this morning and yesterday.
20 The first is just looking to clarify the scope
21 of the cash transaction rule that was discussed
22 this morning.

23 MS. GEORGE: Madam Registrar, could I ask you to
24 bring up FLSC000032. I believe that's
25 exhibit 206. And then could you scroll to

1 page 3. Perfect. Thank you.

2 Q Now, section 1 of this rule limits the amount of
3 cash a lawyer can accept in respect of one
4 client matter to \$7,500. And then at section 3
5 it states that the rule:

6 "-- applies when a lawyer engages on
7 behalf of a client or gives instructions
8 on behalf of a client in respect of the
9 following activities: (a) receiving or
10 paying funds; (b) purchasing or selling
11 securities, real properties or business
12 assets or entities; (c) transferring funds
13 by any means."

14 My question is simply whether it's correct to
15 say that all cash that flows through lawyer's
16 accounts that relates to client work is covered
17 by this rule.

18 A Yes. Cash, all cash that relates to client
19 work, yes.

20 Q Perfect. Thank you. Then my last question.
21 There was some discussion with MR. Isaac
22 regarding the federation's engagement with the
23 federal government which I understood you to say
24 was taking place through the FSLC federal
25 government AML working group which first met in

1 June 2019?

2 A Correct.

3 Q Has the Government of Canada approached or
4 invited the federation to participate or engage
5 in the AML issue either more broadly or as part
6 of a specific initiatives outside of that
7 working group?

8 A No. We had a conversation at one of the working
9 group meetings about what the government is
10 doing more broadly. It's my understanding from
11 what they said that they have a series of round
12 tables, federal provincial territorial round
13 tables that are looking at different aspects, so
14 for example looking at beneficial ownership and
15 other tables looking at other aspects. We
16 actually raised the question with them of
17 whether they would be willing to include us in
18 some of those broader conversations. The
19 answer was no. We didn't take it as a no,
20 you're not important, but no that they are
21 dealing with all matters relating to the legal
22 profession in the context of our joint working
23 group and wish to maintain that, but the end
24 result is that we're not sitting at those
25 tables, although we did ask.

1 MS. GEORGE: Thank you, Ms. Wilson. That concludes
2 my questions for today.

3 THE COMMISSIONER: Thank you, Ms. George. And
4 Mr. Westell, for the Canadian Bar Association
5 BC branch and the Criminal Defence Advocacy
6 Society who has been allocated 25 minutes.

7 MR. WESTELL: Mr. Commissioner, I can that I have no
8 questions. I can say that the interest of my
9 clients was with respect to what Ms. Wilson had
10 to say in particular about the Maloney and
11 German reports and the answers were exactly what
12 we were seeking, so there's no need for
13 questioning on behalf of my clients. Thank you
14 very much.

15 THE COMMISSIONER: Thank you, Mr. Westell. I take it
16 you have nothing arising, MR. Isaac, or perhaps
17 you do?

18 MR. ISAAC: No, Mr. Commissioner, nothing arising.

19 THE COMMISSIONER: All right. Thank you. Thank you
20 very much, Ms. Wilson. You are excused from
21 further testimony.

22 THE WITNESS: Thank you very much.

23 **(WITNESS EXCUSED)**

24 THE COMMISSIONER: Yes, Mr. McGowan, I understand we
25 have another witness who will be testifying this

1 morning. Do we need to stand down to
2 incorporate her?

3 MR. MCGOWAN: Yes, Madam Registrar, I gather we
4 should stand down for a couple of minutes.
5 Maybe five?

6 THE REGISTRAR: Yes.

7 MR. MCGOWAN: Five minutes, please, Mr. Commissioner.

8 THE COMMISSIONER: Thank you. I'll do that.

9 THE REGISTRAR: This hearing is adjourned for
10 five minutes until 11:41 a.m. Thank you.

11 **(PROCEEDINGS ADJOURNED AT 11:36 A.M.)**

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

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

15 MR. MCGOWAN: I believe you are muted,
16 Mr. Commissioner.

17 THE COMMISSIONER: I'm sorry, I wasn't muted. In
18 fact there was some glitch with my microphone,
19 but it appears to be working now; is that right?

20 MR. MCGOWAN: Yes. We can hear you fine.

21 THE COMMISSIONER: All right. Thank you. All right.
22 Yes, Mr. McGowan.

23 MR. MCGOWAN: Yes, Mr. Davis has conduct of the next
24 witness.

25 THE COMMISSIONER: Thank you. Yes, Mr. Davis.

1 MR. DAVIS: Yes, Mr. Commissioner, the next witness
2 will be Dr. Katie Benson of Lancaster
3 University. We hope to complete Dr. Benson's
4 testimony today. Looking at the time I'd ask
5 before the examination if you might permit an
6 extra half an hour of hearing time in the event
7 that it becomes necessary. Three participants
8 will be examining Dr. Benson and by my
9 calculation all three should be finished within
10 an hour.

11 THE COMMISSIONER: All right.

12 MR. DAVIS: Thank you. Madam Registrar, Dr. Benson
13 will affirm.

14 **KATIE BENSON, a witness**
15 **called for the**
16 **commission, affirmed.**

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

19 THE WITNESS: My full name is Katie Jane Benson.

20 First name K-a-t-i-e. Last name B-e-n-s-o-n.

21 THE REGISTRAR: Thank you.

22 **EXAMINATION BY MR. DAVIS:**

23 Q Dr. Benson, can you see and hear me okay?

24 A I can, yes.

25 Q I'd like to start off with an overview of your

1 experience and education. Madam Registrar, if I
2 could ask that you pull up the document titled
3 "CV Katie Benson," please. Dr. Benson, if you
4 could let me know when you see that document on
5 the screen.

6 A I can see that, yeah.

7 Q Thank you. Is this an to date copy of your CV?

8 A It is, yes.

9 MR. DAVIS: Mr. Commissioner, I ask that this be
10 marked as the next exhibit, please.

11 THE COMMISSIONER: Very well. I think we are at 217
12 now, are we, Madam Registrar?

13 THE REGISTRAR: Yes, exhibit 217.

14 **EXHIBIT 217: Curriculum Vitae of Katie Benson**

15 MR. DAVIS: Thank you, and Madam Registrar, I won't
16 need that document displayed any longer. Thank
17 you.

18 Q Dr. Benson, could you describe your educational
19 background for the Commissioner, please?

20 A Yes, I have a Bachelor of Science honours degree
21 in pharmacology, a Master of Science
22 post-graduate degree in criminology, a master of
23 research post-graduate degree in criminology and
24 sociolegal studies, and a doctorate PhD in
25 criminology which was awarded by the University

1 of Manchester in 2016.

2 Q Thank you. And that thesis, your PhD thesis,
3 was titled "The Facilitation of Money Laundering
4 By Legal and Financial Professionals"; is that
5 correct?

6 A Yes.

7 MR. DAVIS: And, Madam Registrar, if I could ask that
8 you pull up the document titled "The
9 Facilitation of Money Laundering By Legal and
10 Financial Professionals: Roles, Relationships
11 and Response 2016." It looks like you beat me
12 to it. Thank you.

13 Q Dr. Benson, do you recognize this as a copy of
14 your 2016 PhD thesis?

15 A I do, yes.

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

18 THE COMMISSIONER: Thank you. That will be
19 exhibit 218.

20 THE REGISTRAR: Exhibit 218.

21 **EXHIBIT 218: The Facilitation of Money**
22 **Laundering by Legal and Financial Professionals;**
23 **Roles, Relationships and Response - A thesis**
24 **Submitted by Katie Benson, 2016**

25 MR. DAVIS: Madam Registrar, I don't need that

1 document displayed any longer, thank you.

2 Q Dr. Benson, could you please provide a brief
3 synopsis of your PhD thesis to the Commissioner?

4 A Yes, so the thesis explores the role of
5 professionals in the facilitation of money
6 laundering, focusing specifically on lawyers and
7 accountants, and also the criminal justice and
8 regulatory responses to this issue, primarily in
9 the UK but taking account of the global and
10 European standards and frameworks on which the
11 UK frameworks are based. So the thesis begins
12 by providing an overview of the global
13 anti-money laundering regime and the EU
14 anti-money laundering framework and in
15 particular relation to how that applies to the
16 regulated sectors of the organizations and
17 individuals that are considered to pose a
18 potential risk for money laundering. Following
19 a review of the existing academic and policy
20 literature and overview of the research
21 methodology the thesis explores key themes that
22 emerged from the research and analysis, and so
23 some of these themes were the means by which
24 money laundering is facilitated, the nature of
25 the relationship between professional and the

1 predicate offender, the financial or business
2 benefit received by the professional for their
3 involvement in the money laundering, and
4 challenges of investigating and prosecuting the
5 facilitation of money laundering. So many of
6 these themes form the basis of the book which I
7 wrote subsequently, so I won't go into any more
8 detail of these here.

9 Q In 2018, Dr. Benson, you contributed a chapter
10 to *The Palgrave Handbook of Criminal and*
11 *Terrorism Financing Law*; is that correct?

12 A Yes.

13 MR. DAVIS: Madam Registrar, if I could ask that you
14 pull up the document entitled "Money Laundering
15 AML in the Legal Profession" by Katie Benson,
16 2018 on to the screen, please.

17 Q And, Dr. Benson, do you recognize this as a copy
18 of the chapter that you authored in the
19 handbook?

20 A I do, yes.

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

23 THE COMMISSIONER: Very well. That will be
24 exhibit 219.

25 **EXHIBIT 219: Money Laundering, Anti-Money**

1 **Laundering and the Legal Profession by Katie**
2 **Benson, 2018**

3 MR. DAVIS: I don't need that document displayed any
4 longer, thank you.

5 Q Dr. Benson, what is the Palgrave handbook?

6 A It's a collection of chapters on anti-money
7 laundering, asset recovery and counterterrorism
8 financing based on a series of workshops that
9 the editors held involving academics and
10 practitioners in these areas.

11 Q Thank you. Can you provide for the Commissioner
12 a brief summary of the chapter that you authored
13 in the handbook?

14 A So this chapter focuses on the complex and at
15 times contentious relationship between money
16 laundering, anti-money laundering and the legal
17 profession and it firstly highlights the growing
18 concern about the role that legal and other
19 professionals play in the facilitation of money
20 laundering, but it also notes that despite this
21 concern there remains little understanding of
22 the scale and nature of professional
23 facilitation of money laundering and it's still
24 very difficult to assess how big a problem
25 facilitation by legal professionals or other

1 professionals actually is. So the chapter
2 tracks the identification of lawyers as
3 gatekeepers in anti-money laundering and the
4 implications of this in relation to the
5 extension of the preventative obligations that
6 had previously been applied to financial
7 institutions to other gatekeeper professionals.
8 So for example, the obligations for performing
9 customer due diligence, recordkeeping and
10 reporting and suspicious activity. And the
11 chapter then goes on to outline the offences
12 within the *Proceeds of Crime Act*, the UK
13 *Proceeds of Crime Act*, which are of relevance to
14 the facilitation of money laundering and then
15 discusses the potential implications of these
16 offences for legal professionals by considering
17 cases of solicitors who have been convicted
18 under these offences.

19 Q You've just testified that your 2016 PhD thesis
20 tracks the structure and some of the substance
21 of the book. Is it fair to say that that is
22 also true of your chapter in the Palgrave
23 handbook?

24 A Yes. So the book basically incorporates
25 everything that they've done before, so the book

1 builds on the themes from the chapter in the
2 Palgrave handbook and builds on the themes from
3 the PhD thesis.

4 Q Thank you. And you've been a lecturer in
5 criminology at the School of Law at Lancaster
6 University since 2018; is that correct?

7 A Yes.

8 Q And what are your main areas of research?

9 A So I teach and research broadly in the areas of
10 money laundering and anti-money laundering and
11 white collar and corporate crime, and organized
12 crime and illicit markets. So my primary
13 research interest is in the role of legitimate
14 professionals, and in the facilitation of money
15 laundering how we respond to that.

16 Q And prior to joining Lancaster I understand you
17 were research associate in the Centre For
18 Criminology and Criminal Justice at the
19 University of Manchester; is that right?

20 A That's right, yes.

21 Q And what responsibilities did you have in that
22 role?

23 A So I worked on a series of research projects
24 relating to transnational corporate bribery and
25 domestic bribery and transnational counterfeit

1 alcohol distribution that were being run by
2 people in the centre, run from the centre.

3 Q And you previously worked as a consult with the
4 Turks and Caicos Special Investigation and
5 Prosecution Team from 2011 to 2014. Do I have
6 that right?

7 A Yes.

8 Q And you also have experiences, an analyst
9 working with law enforcement; is that right?

10 A Yeah.

11 Q What can you tell the Commissioner about the
12 roles that you held in law enforcement?

13 A So my previous role before I did my PhD was as
14 Knowledge Manager at the Scottish crime and
15 during enforcement agency so that involved
16 improving knowledge management systems within
17 the agency and also involved establishing links
18 and joint projects and things like that between
19 police and policymakers and academia to improve
20 the agency's knowledge base on serious organized
21 crime. Prior to that I was employed by
22 Derbyshire Constabulary as an intelligence
23 analyst working on a national distraction
24 burglary unit. That involved producing
25 strategic and operational analytical reports and

1 products to inform investigations and help
2 provide a coordinated national response to
3 destruction burglary in the UK. And as you
4 mentioned during the period of 2011 to 2014
5 alongside completing my MRes and started my PhD
6 I worked on a consultancy basis on various
7 projects providing analytical support, including
8 for the Turks and Caicos special investigation
9 prosecution team, so this involved primarily
10 using specialist software to manage and
11 development financial data to support the
12 investigation.

13 Q And in any of those roles were you exposed to
14 information or cases involving lawyers that were
15 suspected or otherwise of laundering the
16 proceeds of crime?

17 A Yes. It was during my time as knowledge manager
18 at the Scottish Crime and Drug Enforcement
19 Agency which was basically Scotland's national
20 organized crime policing and intelligence agency
21 that I first became aware of this issue. It was
22 at that time that the issue of professional
23 enablers was starting to emerge and gain
24 traction within organized crime policing and
25 policy discourse in the UK, so this idea of

1 individuals in legitimate occupational positions
2 who provided assistance to organized criminals
3 and/or enabled their activities in some way.

4 It was a few years later in 2013 that the UK
5 government Serious and Organized Crime Strategy
6 mentioned this specifically, but it was starting
7 to be talked about when I was at the SCDEA. And
8 so this was a really interesting development in
9 organized crime policing and so at the time at
10 the agency intelligence and investigation
11 activities were starting to look at these kinds
12 of individuals they were starting to feature and
13 investigations into crime groups and so it was
14 this that led me to start a PhD focused on this
15 area.

16 Q Thank you.

17 MR. DAVIS: And Madam Registrar, if I could ask that
18 you pull up the document at tab 2 of your index.
19 It's titled "The Law of Financial Crime, Lawyers
20 and the Proceeds of Crime, the Facilitation of
21 Money Laundering and Its Control" by Katie
22 Benson, 2020, onto the screen, please. Thank
23 you.

24 Q And, Dr. Benson, do you recognize this as your
25 book published in April 2020 titled "The Law of

1 Financial Crime, Lawyers and the Proceeds of
2 Crime, The Facilitation of Money Laundering and
3 Its Control"?

4 A I do, yes.

5 MR. DAVIS: Mr. Commissioner, I'd ask that this be
6 marked as the next exhibit, please.

7 THE COMMISSIONER: 220.

8 THE REGISTRAR: Yes, exhibit 220.

9 **EXHIBIT 220: The Law of Financial Crime -**
10 **Lawyers and the Proceeds of Crime - The**
11 **Facilitation of Money Laundering and Its Control**
12 **by Katie Benson, 2020**

13 MR. DAVIS: Mr. Commissioner, before I continue,
14 commission counsel are seeking a direction that
15 Dr. Benson's book not be posted to the website.
16 It's commission counsel submission that the book
17 is commercially sensitive. It's the property of
18 the publisher and that the inquiry process will
19 remain open to the public by way of Dr. Benson's
20 viva voce evidence today. I would note that
21 this has no impact on the ability of
22 participants to rely on Dr. Benson's book in the
23 course of their examinations. It's been
24 circulated to participants withstanding in the
25 sector and I can advise that they were informed

1 on November 12th, 2020 by email that the
2 commission counsel would seek this direction.

3 THE COMMISSIONER: Okay. And you've received no
4 contrary submissions?

5 MR. DAVIS: That's right, Mr. Commissioner.

6 THE COMMISSIONER: All right. In light of that,
7 then, I will make that direction. That is that
8 the exhibit 221 -- I'm sorry, is it 220?

9 THE REGISTRAR: Yes, exhibit 220.

10 THE COMMISSIONER: Yes, will not be posted as an
11 exhibit on the commission's website. Thank you.

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

13 Q Dr. Benson, you've already answered this a
14 little bit, but could you describe the context
15 that led you to conduct the underlying research
16 and publish this book?

17 A Yes, it was as I said the origins of the book
18 and the research on which its based were my time
19 working at the Scottish Crime and Drug
20 Enforcement Agency, and the emergence of the
21 concept of professional enablers in organized
22 crime policing and policy discourse. So yeah,
23 I've been thinking about doing a PhD for a while
24 and so for various reasons and that was a good
25 time, so I decided to apply funding to do a PhD

1 on the role of professional enablers in
2 organized crime. Broadly speaking as time went
3 on I narrowed my focus to the legal and
4 accountancy professionals and for subject of the
5 PhD and then when I converted the PhD thesis
6 into the book I decided to focus on the legal
7 profession specifically and that is where my
8 focus has really been since the PhD. This is
9 partly because -- partly because the case data
10 stated that I collected applied only to --
11 partly because while there are issues that are
12 relevant and cross different types of
13 professional sectors different professions also
14 have specific context and so it's important to
15 be able to focus --

16 THE REGISTRAR: Sorry to interrupt, Mr. Commissioner,
17 I think there is an audio problem. I don't know
18 if you can hear Dr. Benson's earlier answer.

19 THE COMMISSIONER: I can hear Dr. Benson fine.
20 Mr. Davis?

21 MR. DAVIS: I can as well, Mr. Commissioner.

22 THE COMMISSIONER: Yes, so can I. I did hear
23 somebody else speaking over her from time to
24 time.

25 THE REGISTRAR: Sorry, it's probably my headset then.

1 Sorry for the interruption.

2 THE COMMISSIONER: No, that's fine. Thank you. I'm
3 sorry, Dr. Benson, for the interruption. Please
4 carry on.

5 THE WITNESS: No, that's fine. So yeah, as I said,
6 while different -- while there are issues that
7 are relevant across different professions,
8 different professions also have specific context
9 and so for me it was important to be able to
10 focus on the specific context of legal
11 professionals and the legal profession and, so
12 yes, so I came into this research originally
13 from the facilitators of organized crime, money
14 laundering perspective rather than kind of from
15 experience working in the legal profession.

16 MR. DAVIS:

17 Q Thank you. The first topic that I hope to cover
18 in your examination is the methodology and scope
19 your research for this book. Looking at page 4
20 of the book, and I don't intend to take you
21 there. Sorry, any references are more for the
22 record. Could you explain to the Commissioner
23 what distinguishes your research from that
24 previously undertaken with respect to lawyers
25 and money laundering?

1 A Yes, there's been very little academic research
2 in this area and little involving empirical
3 research so involving the analysis of data, and
4 two notable previous examples are a paper by
5 Stephen Schneider, the Canadian academic,
6 published in 2005 in which he used data
7 collected from a sample of RCMP proceeds of
8 crime case files to explore how lawyers may be
9 used to launder criminal proceeds. Another
10 paper, a paper by Cummings and Stepnowsky
11 analyzed a sample of money laundering cases from
12 the US court of appeals to examine whether and
13 to what extent lawyers were involved in
14 transactions that serve to launder illicit
15 funds. Other research is focused more on legal
16 professionals understanding and interpretation
17 of their gatekeeper role through interviews with
18 lawyers in Sweden, France and the UK. So the
19 distinguishing features of my research are
20 basically its breadth and depth. It didn't aim
21 to assess the scale of the problem. I didn't
22 try to evaluate how often lawyers are involved
23 in money laundering, and partly because of the
24 methodological difficulties of doing that. My
25 aim was to try and understand the nature of

1 legal professionals' involvement in the
2 facilitation of money laundering and its control
3 through criminal justice and regulatory
4 mechanisms.

5 So incorporating multiple different sources
6 of data into the analysis enabled me to
7 appreciate multiple perspectives and triangulate
8 knowledge produced in different ways and at
9 different levels, and this allows a more
10 comprehensive analysis of this issue which is
11 such a complex and multilayered issue.

12 So, for example, it allowed me to consider
13 the perspectives of active and criminal justice
14 regulatory and professional bodies and the legal
15 profession itself and identification of areas of
16 convergence and divergence in the different
17 perspectives. And it also allowed the
18 conclusions of professional disciplinary
19 tribunals to be analysed alongside perspectives
20 from criminal trials and views from the
21 prosecution service to be contrasted with those
22 from police bodies involved in investigation and
23 enforcement, and finally using a theoretical
24 conceptual framework for the analysis based in
25 existing research and literature and white

1 collar crime and organizational crime and
2 provided a strong theoretical grounding for
3 research.

4 Q Thank you. You've covered a few of my next
5 questions. You've gone on to the limitations
6 that you faced when you were collecting the
7 data. Can you describe any other limitations
8 that the Commissioner should consider when he
9 considers your book.

10 A So one of the first tasks was to identify the
11 cases, which posed a challenge. So I analyzed
12 data on 20 cases in which lawyers were convicted
13 for facilitating money laundering between 2002
14 and 2013. One of the first tasks was to
15 identify the cases which posed a challenge.
16 There isn't an easy way of identifying cases of
17 lawyers who facilitated money laundering, which
18 is what I was looking for. I used a number of
19 different sources, included a search of the
20 Westlaw legal database, a search of transcripts
21 of all disciplinary hearings, from the
22 solicitor's disciplinary tribunals in England
23 and Wales and Scotland and various other sources
24 to collect, to identify these cases. And then
25 when I identified my sample of 20 cases I

1 collected data on these cases from a variety of
2 sources. So the case data was combined with
3 data from a series of interviews with law
4 enforcement personnel working in financial
5 investigation units or organized crime policing
6 units, members of relevant professional
7 regulatory bodies, prosecutors specializing in
8 money laundering investigations and assets
9 recovery and some practising solicitors, and
10 also legislative and regulatory frameworks and
11 policy documents from government law enforcement
12 organizations. And professionals in regulatory
13 bodies.

14 So the challenges include -- the limitations
15 challenges, as I said, include identifying the
16 cases. I had to rely on publicly available
17 data. I couldn't access police or other
18 official confidential data, but there was a good
19 amount of that for many of the cases. In terms
20 of the interviews obviously I was limited to the
21 people who agreed to be interviewed and that I
22 could fit in the scope of the PhD, but again I
23 got a decent range of different perspectives.

24 Q At page 10 you say you were unable to interview
25 any of the convicted lawyers; is that right?

1 A Yes, that's correct. I made attempts to speak
2 to some of them, but that didn't work out. But
3 that is probably another project in itself, but
4 yes I tried that, but that didn't work out.

5 Q And you write later in the book that the numbers
6 also don't include lawyers who went undetected;
7 is that right?

8 A Yes. So at some point you have to put
9 parameters around your data, so I decided that
10 my inclusion criteria for the cases was
11 solicitor's that had been convicted of money
12 laundering offences under the *Proceeds of Crime*
13 *Act* or its predecessors between 2002 and 2013
14 where the offences committed were related to
15 their professional position or role and involved
16 the facilitation of laundering of the proceeds
17 of crime committed by others. So I excluded
18 self-laundering. So by the nature of these
19 criteria obviously only include those who have
20 received a criminal conviction and not those who
21 either weren't detected, weren't prosecuted or
22 weren't convicted.

23 Q For clarity, so that means that lawyers who
24 received only regulatory sanction wouldn't be
25 included in the book; is that right?

1 A Yes, that's right. It didn't lawyers who
2 received a regulatory sanction only. If I did
3 similar offer, the research again, I probably
4 would look at the types of regulatory sanctions
5 given out and how they relate, but doing this
6 would have led to difficulties around creating
7 clear parameters for the data. So there is a
8 balance between getting a broad range of data
9 and having clear parameters of where there's
10 little subjectivities possible. So I made the
11 point in the book that this is it not a
12 comprehensive representative sample because of
13 all the challenges of achieving that, but what
14 is interesting is even within this small sample
15 that probably doesn't include everything you can
16 still see considerable variation, which I'll
17 probably talk about later.

18 Q And at page 5 of the book you note that it
19 focuses primarily on the UK. As my last
20 question on the methodology, I'd ask what
21 cautions or caveats should the Commissioner have
22 in mind considering that this -- the analysis
23 only applies to the UK. How should he consider
24 that in relation to British Columbia?

25 A Yeah, I think that is an important question for

1 anyone looking at this from a different
2 jurisdiction. First there will obviously be
3 different legislative regulatory frameworks.
4 Ultimately for many countries these come from
5 the global anti-money laundering regime and the
6 FATF standards, et cetera, but inevitably as
7 they trickle down to regional and nation state
8 level they will take on their own form.

9 Also there will be differences in the
10 structure and nature and processes of the legal
11 profession and the extent of those differences
12 will vary and there will also be similarities
13 and hopefully the principles of the findings
14 will translate, even if some of the details need
15 to be adapted. And that will be for those of
16 you know the Canadian context better than me to
17 identify how that can be translated.

18 Q Thank you. And, Dr. Benson, my next area of
19 questioning relates -- I'm going to be brief --
20 to the development of the UK's anti-money
21 laundering regime. And at pages 2 and 3 you
22 review the development of a national action plan
23 to reform anti-money laundering measures in
24 UK. Those started with a national risk
25 assessment of money laundering and terrorist

1 financing in 2015 and was followed by an action
2 plan in 2016 and a subsequent risk assessment to
3 assess the status of that implementation; is
4 that right?

5 A Yes, that's right.

6 Q And how did the national risk assessments and/or
7 the action plan relate to lawyers, if at all?

8 A They did, yes. So the aim of the national risk
9 assessment and produced by UK government was to
10 identify, understand and assess the money
11 laundering and terrorist financing risk faced by
12 the UK, and both the national risk assessments
13 assessed legal service providers as high risk
14 and based on structural risk which used a series
15 of factors to indicate the vulnerabilities of a
16 particular sector for money laundering and the
17 relatively likelihood that the threat of money
18 laundering would materialize in that particular
19 sector. So the model they used focused on the
20 risk of individuals or organizations in
21 particular sectors being used by criminals to
22 facilitate money laundering, wittingly or
23 unwittingly, due to the services it offers. So
24 some of the key threats and vulnerabilities of
25 the national risk assessment identified and

1 included trust and company formation, so the
2 creation of trusts and companies which can be
3 used to facilitate money laundering by hiding
4 beneficial ownership. This was assessed by the
5 2017 national risk assessment to be the legal
6 service at highest risk of exploitation.
7 Criminals use of legal professionals to purchase
8 property with criminal proceeds was another
9 primary risk area identified, the abuse or
10 misuse of client accounts or what you call trust
11 accounts in Canada, for example to provide
12 personal banking facilities or to move or store
13 criminal proceeds, or again in property
14 purchases, so that was another key risk area.
15 And then along with that they identified issues
16 with levels and standards of compliance with the
17 money laundering regulations across the
18 profession and challenges in supervision,
19 especially in relation to small firms and sole
20 practitioners. So in between the two national
21 risk assessments, as you said, there was an
22 action plan published and this led, for example,
23 to the establishment of the Office for
24 Professional Body Anti-Money Laundering
25 Supervision, or OPBALS, and it also led really

1 just to an increasingly proactive role for a
2 legal professional regulatory body in preventing
3 money laundering through the sector, so it led
4 to them becoming more involved in information
5 and communication campaigns about the risk for
6 money laundering, and as I said, just I think a
7 general increase in the priority and
8 significance that was given to this issue that
9 was given to this issue by the sector.

10 Q Thank you. And, Dr. Benson, very quickly I just
11 received a note from our transcriber. If you
12 wouldn't mind speaking just a little more slowly
13 so they can keep up. Thank you.

14 On pages 24 and 25 you note that there have
15 been five European Union money laundering
16 directives. What are the European Union money
17 laundering directives?

18 A So the EU money laundering directives are
19 basically the way that the EU transposes the
20 global standards set out by the FATF
21 recommendations to the EU sphere to the regional
22 context. So the first EU money laundering
23 directive was introduced in 1991 a year after
24 the first FATF recommendations. And the
25 directives have basically two strands. So

1 first, criminalization. So they might require
2 member states to criminalize certain activities
3 or include certain activities in predicate
4 crimes and their second key strand is
5 prevention, and this is where we see the
6 requirements for certain sectors to implement
7 anti-money laundering prevention methods.

8 So the first money laundering directive
9 introduced requirements for financial and credit
10 institutions to implement anti-money laundering
11 procedures and to carry out due diligence and to
12 report suspicious transactions because at the
13 time banks and other financial institution were
14 what we thought of as gatekeepers, the types of
15 organizations that were considered a risk.

16 The second money laundering directive
17 introduced in 2001 extended the preventative
18 obligations beyond the financial sectors to
19 include a range of non-financial businesses and
20 professions considered to pose a money
21 laundering risk, such as real estate agents,
22 high value dealers, accountants and legal
23 professionals. So this was where we started to
24 see in a European context the focus moving from
25 just banks to these other types of businesses

1 and professions that were considered to pose a
2 risk. There have been four subsequent EU money
3 laundering directives as mentioned which have
4 made various amendments and additions, but it
5 was the second one that was key for legal
6 professionals because it was that one that
7 brought them under the anti-money laundering
8 framework.

9 Q And you go on to note at page 135 that I'll
10 quote here:

11 "The role of 'legitimate' professionals
12 who provide assistance of various forms to
13 organized crime groups and other high
14 priority criminal actors has become
15 increasingly prominent on the agenda of
16 serious and organized crime policing in
17 the UK over the last decade or so."

18 Dr. Benson, why do you believe that that is the
19 case?

20 A A combination of, I think, a combination of
21 concern about the harm caused by money
22 laundering and about the centrality of money
23 laundering to the criminality that generates it,
24 that proceeds it, and concern about the scale of
25 initial illicit financial flows and awareness of

1 the role, and for example that the UK plays in
2 global money laundering and the illicit
3 financial flows, and then also a realization of
4 the key and critical role that various
5 professionals play in facilitating this. So a
6 combination of those factors.

7 Q Thank you. At page 3 you describe a term that
8 you coined, high-end money laundering, as
9 something that's distinct from cash-based money
10 laundering. Can you explain what those terms
11 means to the Commissioner, please.

12 A So these are terms that have come from a policy
13 discourse, so these are terms developed and used
14 in official strategy documents and risk and
15 threat assessments. Cash-based money laundering
16 refers to the laundering of proceeds of crime
17 that exist in cash form. So this would refer
18 primarily to the proceeds of organized crime or
19 illicit market activity such as drug trafficking
20 and where the proceeds are generated in cash
21 form. So this kind of money laundering is
22 related to the use of cash intensive businesses
23 on money service bureaus and also obviously
24 money generated from this kind of activity can
25 be used to buy property and high value goods and

1 that can be where a legal professionals can play
2 a role.

3 High end money laundering is defined as the
4 laundering of large amounts of illicit funds
5 through the financial and professional services
6 sectors and it's often associated primarily with
7 serious fraud corruption and tax evasion. So
8 these aren't perfect categories. I think the
9 important thing was that they would develop to
10 raise awareness of the issue of high end
11 non-cash based laundering.

12 I think traditionally perceptions of money
13 laundering and understandings of money
14 laundering and law enforcement action against
15 money laundering is focused on cash based and
16 the proceeds of drug trafficking and things like
17 that, but there has been an increasing awareness
18 of the problem of large scale illicit financial
19 flows related, for example, to corrupt regime,
20 corrupt elites, corporate bribery, tax evasion,
21 that kind of thing, and that's becoming
22 increasingly on the radar in a way perhaps that
23 it wasn't previously.

24 Q Thank you. And my next area of questioning
25 relates to how the UK's anti-money laundering

1 regime attempts to deal with the potential for
2 lawyers to become involved in money laundering.
3 I don't intend to go through in great detail the
4 legislative provisions, but I ask if you could
5 describe to the Commissioner the offence under
6 section 330 of the *Proceeds of Crime Act* 2002,
7 please.

8 A Yes, so section 330 of the *Proceeds of Crime Act*
9 contains the offence of failure to disclose a
10 regulated sector. So this is section lays out
11 provisions to enforce the disclosure of
12 suspicious transactions by members of the
13 regulated sector. So by the regulated sector
14 I'm talking about financial and credit
15 institutions, accountants, tax advisors, trust
16 or company service providers, estate agents,
17 high value dealers and legal professionals.

18 So under section 330 a person commits an
19 offence if they know or suspect or have
20 reasonable grounds to know or suspect that
21 another person is engaged in money laundering
22 that that information came to them in the course
23 of a business in a regulated sector. And they
24 don't make a required disclosure as soon as
25 practicable. So this makes it a criminal

1 offence for any one working in the regulated
2 sector to fail to report suspicions of money
3 laundering. And this offence, section 330
4 offence includes the objective test of having
5 reasonable grounds for knowledge or suspicion.
6 So this asks whether there were factual
7 circumstances from which an honest or reasonable
8 person engaged in a business in the regulated
9 sector should have inferred knowledge or formed
10 the suspicion that another person was engaged in
11 money laundering.

12 Q And you go on. I'm jumping ahead a bit here,
13 but you go on to write in your book that the
14 *mens rea* of suspicion in the *Proceeds of Crime*
15 *Act* 2002 is unique when it comes to proceeds of
16 crime legislation. And how is that *mens rea*
17 unique?

18 A So within the various money laundering offences
19 in the *Proceeds of Crime Act* the proceeds of
20 crime to which the offences relate are referred
21 to as criminal property, which is defined a
22 property that constitutes a person's benefit
23 from criminal conduct or it represents such a
24 benefit and the alleged offender knows or
25 suspects that is it constitutes such benefit.

1 Section 328, which is one of the three main
2 money laundering offences in Parker alongside
3 the failure to disclose offence states that a
4 person commits an offence if they enter into or
5 become concerned in an arrangement that they
6 know or suspect facilitates the acquisition,
7 retention, use or control of criminal property.
8 So this creates a kind of double *mens rea*
9 requirement which includes both knowledge and
10 suspicion and so you have this concept of
11 suspicion in the provisions which is ambiguous.
12 The legal sector anti-money laundering
13 supervisors provide guidance on the meaning of
14 suspicion for its members which highlights the
15 subjective nature of suspicion and states that
16 the requirement for suspicion doesn't need to be
17 clearly or firmly grounded on specific facts.
18 There must be a degree of satisfaction greater
19 than mere speculation, but you're not expected
20 to know the exact nature of the criminal offence
21 or what particular funds were definitely those
22 arising from crime.

23 And so these *mens rea* requirements differ
24 from the international frameworks from which the
25 *Proceeds of Crime Act* derived. So the FATF

1 recommendations related to UN conventions, and
2 successive EU money laundering directives have a
3 much greater focus on intent and knowledge and
4 are directed more at those deliberately
5 laundering criminal proceeds.

6 Q Thank you. And turning back to a moment for the
7 section 330 offence, the failure to disclose
8 offence, you discuss in your book a number of
9 interviews where interviewees spoke to the
10 utility of that offence in pursuing money
11 laundering. Can you describe what interviewees
12 said about the section 330 offence, please.

13 A Yes. So they considered it a necessary and
14 beneficial element of the legislation due to
15 firstly the possibility that those who turn a
16 blind eye to money laundering could escape
17 conviction and, secondly, due to the
18 difficulties of proving active involvement in
19 money laundering. So the explanatory notes for
20 the *Proceeds of Crime Act* state that the
21 rationale for the inclusion of the reasonable
22 grounds test was that persons who are carrying
23 out activities in the regulated sector should be
24 expected to exercise a higher level of diligence
25 in handling transactions than those employed in

1 other business, and the prosecutor that I
2 interviewed echoed this. He considered the
3 lower burden of proof required by section 330 as
4 a concession to the recognition that regulated
5 professionals are a weak point in money
6 laundering risk, so he suggested that it was
7 necessary to kind of put a more onerous burden
8 on them to ensure that they're not complicit.
9 And he didn't consider that -- he didn't
10 consider that level of *mens rea* to be
11 excessively low or problematic and considered
12 that there were safeguards in place.

13 Police officers and financial investigators
14 I spoke to considered the section 330 offence as
15 providing them with opportunities because of the
16 lower burden of proof and because of
17 difficulties they had previously experienced
18 with proving guilty knowledge of proving active
19 involvement.

20 Q And starting on page 25 you describe some of the
21 key portions of the UK money laundering
22 regulations that apply to legal professionals.
23 So one of those is a requirement that legal
24 professionals complete a risk assessment.
25 Dr. Benson, what is a risk assessment?

1 A So yeah, under regulation 18 legal professionals
2 have to carry out and maintain a firm level risk
3 assessment to identify and assess the risk of
4 money laundering and terrorist financing that
5 their firm faces. So this needs to take into
6 can the nature and location, so sector and
7 jurisdiction, of its client base. The countries
8 or geographic areas in which it operates, and
9 the products and services that it provides in
10 its transactions and its delivery channels. And
11 so it also needs to take into the account the
12 risk assessment carried out by its supervisory
13 body.

14 Q And I understand that lawyers in the United
15 Kingdom also have to keep policies and
16 procedures with respect to anti-money
17 laundering; is that right?

18 A Yes, so they have to establish and maintain
19 appropriate written policies, controls and
20 procedures to mitigate and management
21 effectively the risk of money laundering and
22 terrorist financing identified in the risk
23 assessment that they have to carry out.

24 Q Thank you. And what about the customer due
25 diligence in recordkeeping requirements that

1 lawyers are subject to in the United Kingdom?

2 A Legal professionals must undertake customer due
3 diligence measures which involve verifying the
4 identify of their clients and obtaining
5 information on the nature and purpose of the
6 intended business relationship or transaction
7 and then they must also keep a record of the
8 information obtained on the customer's identity
9 and business along with supporting documentation
10 for a period of five years.

11 Q Thank you. And I'd like to turn to a second in
12 part of your book you discuss issues with the
13 enforcement of the regime that we just discussed
14 and you identify a number of challenges to
15 investigation and prosecution starting at about
16 page 136 of your book. Can you explain to the
17 Commissioner the challenges associated with
18 proving guilty knowledge?

19 A So a number of the law enforcement interviewees
20 suggested that the primary problem with bringing
21 prosecutions against professionals believed to
22 be involved in facilitating money laundering is
23 proving their guilty knowledge. So proving that
24 the solicitor knew or suspected the money they
25 handled had come from criminal activity. And

1 this ties in with what I was saying about law
2 enforcement interviewees talking about moving
3 towards using section 330 offence because of the
4 lower burden of proof required. So it's worth
5 pointing out here that these interviews were
6 carried out several years ago now, so it would
7 be useful again now whether this move had
8 happened and whether there have been changes in
9 convictions. But yeah, so that was the issue
10 that law enforcement professionals brought up
11 about proving a guilty knowledge.

12 Q You note, you just mentioned the lower burden of
13 proof for a section 330 offence, but you also
14 note in your book that there's still a small
15 number of prosecutions. Why do you believe that
16 to be the case despite the low burden of proof?

17 A The small number of prosecutions of
18 professionals, because I think of the number of
19 challenges involved so the law enforcement
20 identified a whole range of different challenges
21 involved with investigation and prosecution,
22 including proving a guilty knowledge, also
23 related to establishing a connection between the
24 professionals and the proceeds, issues of
25 confidentiality and privilege, lack of victims

1 and also issues related to the complexity of the
2 cases and cases being outside of the comfort
3 zone of the police and that kind of thing, so
4 there's a whole kind of variety of issues that
5 make the prosecution of legal professionals
6 difficult.

7 Q Thank you. And what did interviewees have to
8 say about the utility of lawyers potentially as
9 witnesses in prosecuting criminal cases?

10 A So yeah, they talked about investigators
11 highlighted the legal professionals could be
12 used as witnesses in the prosecution of other
13 offenders and also in the asset confiscation
14 process. So one of the issues that came up in
15 relation to the difficulties of prosecuting,
16 investigating and prosecuting legal
17 professionals, as well as all the challenges
18 that law enforcement faced, there also seemed to
19 be a back of prioritization of professionals in
20 investigations into organized crime in financial
21 investigations. And one of these issues was
22 that law enforcement seem to have more of a
23 focus on the primary offenders, more of a focus
24 on the predicate offenders, considered them the
25 kind of real offenders still and so didn't so

1 much focus on the professionals such as lawyers,
2 and this kind of ties in with this idea that
3 they were useful for them as witnesses in the
4 prosecution of the primary offender. So one of
5 the investigators stated that if they felt that
6 there wasn't going to be enough evidence to
7 charge a solicitor they would use them as a
8 witness.

9 Q And you summarize at page 143 looking at all
10 these enforcement challenges that there is a
11 lack of intelligence in the area. Does that
12 refer to a lack of intelligence regarding the
13 involvement of legal professionals and money
14 laundering?

15 A Yes, so this was brought up by investigators in
16 relation to the idea that professional enablers
17 of organized crime weren't being investigated if
18 they were identified during an investigation
19 into an organized crime group, for example. So
20 the intelligence collection and analysis that
21 would be done in relation to the main members of
22 the other organized crime groups are the primary
23 offenders, if the professionals wasn't seen a
24 priority then the same kind of intelligence
25 collection analysis wouldn't be done.

1 financial intelligence unit and can obviously be
2 really useful, but that is intelligence that
3 comes from lawyers and other professionals.
4 What I'm referring to here is the kind of ground
5 level intelligence collection that is done
6 through investigations into organized crime
7 activities and other types of criminal activity
8 that would provide a really great opportunity
9 for collecting intelligence on the role that
10 professionals link to the criminals play. I
11 mean, I know that this is done in some places
12 where it's considered important, but it's not
13 prioritized across the board in policing. But
14 if it's not prioritized across the board in
15 policing, then the intelligence picture will be
16 lacking.

17 Q Thank you for clarifying that. I guess I would
18 ask how then do the suspicious activity reports
19 filed with the FIU and presumably distributed to
20 police if it meets a threshold, how does that
21 play into the intelligence picture?

22 A That is going to play a key role in the
23 intelligence picture and I don't know the
24 details of the exact picture and the numbers
25 that that creates but the -- so the SARs

1 submitted are analyzed by the national financial
2 intelligence unit which is based in the national
3 crime agency and then that will be used -- that
4 will be used to create that kind of broader
5 intelligence picture but also that can be used
6 to provide intelligence to regions and forces,
7 for example, for their specific investigations
8 or to highlight people of interest or issues of
9 interest. So that plays a key role. That's
10 kind of one part of the role in the intelligence
11 picture.

12 Q Thank you. And, Dr. Benson, I'm next going to
13 turn to the cases that you reviewed in your
14 book. And first you looked at 20 cases of
15 solicitors who were convicted for facilitating
16 money laundering in the United Kingdom between
17 2002 and 2013; is that right?

18 A Yes, that's right.

19 Q And you note at footnote 8 on page 7 that there
20 is no legislative offence of facilitating money
21 laundering. So can you explain to the
22 Commissioner what the phrase facilitating money
23 laundering means?

24 A Yes, so one of the offences within the *Proceeds*
25 *of Crime Act* refers to involvement in an

1 arrangement which facilitates the acquisition,
2 retention, use or control of criminal property
3 by or on behalf of the another person. So
4 that's the closest single offence related to the
5 facilitation of money laundering. But there are
6 also other offences which could reflect this
7 kind of concept of the facilitation of money
8 laundering. And so actually my starting point
9 was a broad conceptualization of the
10 facilitation of money laundering rather than any
11 kind of legal definition. My starting point for
12 this was that this was terminology that was used
13 in policy documents. So I started from this
14 idea of the facilitation of money laundering
15 that was used in anti-money laundering policy
16 discourse documents and with the aim of
17 understanding what this means, what it actually
18 looks like. So essentially I would
19 conceptualise the facilitation of money
20 laundering as a term that encompasses the
21 various ways by which someone in a legitimate
22 occupational position plays a role in how
23 another person uses, moves or conceals the
24 origins of the proceeds of crime.

25 Q Thank you. And, Dr. Benson, you've already

1 answered my question here about how you identify
2 the cases. I'll ask you next what were the top
3 offending areas of practice that you saw, so for
4 example, were there any particular areas of
5 practice that surfaced more than others in your
6 study?

7 A Yes. So the cases primarily involved -- the
8 majority of the cases involved the solicitor
9 acting in the purchase or sale of residential
10 property or using his or her firm's client
11 account to facilitate transactions involving
12 funds derived from criminal activity or to move
13 such funds from one place to another.

14 Q And --

15 A They were two key.

16 Q Sorry, go ahead.

17 A I was going to say so they were the two key
18 categories.

19 Q Thank you. And at page 53 you actually allocate
20 the cases to four categories and first that's
21 buying or selling property, the second is the
22 misuse of client accounts, the third is
23 corporate vehicles and offshore consistent, and
24 the fourth is legal and/or financial services.
25 Is that right?

1 A Yes, that's right.

2 Q And what can you highlight about the six cases
3 that you reviewed under the buying or selling
4 property category?

5 A So these cases involved individuals using the
6 proceeds of crime to purchase a property or
7 multiple properties or selling property that had
8 been bought using the proceeds of crime. So the
9 role of the convicted solicitor in each case was
10 in the conveyancing. So conducting the legal
11 and administrative work required for the
12 transfer of the property. So the details of
13 each case within this category vary. For
14 example, there was a solicitor who acted in the
15 purchase of 11 properties for a client for which
16 the 66,000 pounds paid as a deposit on these
17 properties was believed to have come from the
18 client's organized fuel fraud activity. Another
19 example was a solicitor who did the conveyancing
20 for the sale of a property owned by her
21 husband's company and her husband was later
22 convicted for fraud. And various others. So
23 the details of each case varied. One thing to
24 note here, obviously, is that the client
25 account, the trust account will also have been

1 used in those cases of property purchase for the
2 transfer of the deposit.

3 Q Thank you. We'll turn to the client accounts
4 section next. But at page 74, and I'm
5 paraphrasing a little bit here, you write that
6 it's inevitable that lawyers are involved in the
7 purchase of sale or property for clients will
8 come into contact with the proceeds of crime.
9 What made you come to this conclusion?

10 A Yes, so I'm not saying it's inevitable that all
11 lawyers will come into contact with the proceeds
12 of crime, but the likelihood that those involved
13 in profit-making criminal activity will buy or
14 invest in property along with the necessary role
15 that legal professionals play in such
16 transactions makes it inevitable that some legal
17 professionals will be involved in property
18 transactions involving the proceeds of crime.

19 Q And you go on to describe at page 82 the risk of
20 conveyancing farms. Can I ask you to describe
21 for the Commissioner what a conveyancing farm
22 is.

23 A So this was interesting. This wasn't a term I
24 had heard of before, but two solicitors that I
25 interviewed talked about conveyancing farms or

1 conveyancing factories, these are the term that
2 is they used. And they were using these terms
3 to describe kind of big companies that just do
4 cheap conveyancing that process large numbers of
5 conveyancing transactions by using teams of
6 paralegals rather than qualified solicitors. So
7 this with would involve teams of 20 or
8 30 paralegals supervised by a single qualified
9 solicitor who just signs off each case. So they
10 highlighted this development, the kind of rise
11 of these kind of conveyancing farms,
12 conveyancing factories, as potentially
13 particularly high risk because dealing with the
14 volume of conveyancing cases and each paralegal
15 was expected to deal with makes due diligence
16 that much more difficult.

17 Q Thank you. And moving to the second category
18 now, what can you highlight for the Commissioner
19 about the cases, the seven cases you looked at
20 under the misuse of client accounts section?

21 A So yes, so in other categories that I used funds
22 may also have been held in or transferred
23 through a client account. But in this category
24 it was the use of the client account for passing
25 money from one location to another that was a

1 primary means by which the criminal proceeds
2 were managed and the solicited actions in
3 facilitating these transactions that resulted in
4 their conviction. Again the details of each
5 case varied. So for example just to give a
6 couple of examples there was a case where
7 five million pounds which was the proceedings of
8 a VAT fraud was transferred from the fraudster
9 to one bank account in the name of an Irish
10 company and 3 million pounds was transferred to
11 another bank account in the name of a Spanish
12 company and then the funds were transferred to
13 the client account of a solicitor's firm. So
14 the solicitor involved who was a partner in the
15 firm arranged these transfers into the client
16 account in the names of six different clients
17 and then made individual disbursements from the
18 client account disguised as ordinary solicitor
19 client transactions. So 4 and a half million,
20 for example, was transferred to a company in the
21 US and other amounts are were used to buy a
22 yacht and a number of cars.

23 Q And just -- go ahead.

24 A Yeah, so I was going to say there was various
25 different examples of the use of client

1 accounts. Another conviction came about because
2 a solicitor received 14,000 Euros into his
3 firm's client account and then transferred it to
4 the partner of the person who instructed him and
5 a range of other kind of transactions that
6 involved the client account.

7 Q So having looked at these misuse of client
8 account cases what can you tell the Commissioner
9 about in your view the risks associated with the
10 use of client accounts by legal professionals?

11 A So client accounts pose a risk because they are
12 used to transfer money, and so if they are used
13 to transfer legal money, they can be used to
14 transfer dirty money. Client accounts provide a
15 kind of a facade of legitimacy to funds that
16 pass through them and transactions that
17 originate from them. So they can be used as a
18 way of moving money from one individual to
19 another under the guise of a legal transaction
20 without attracting attention because the client
21 can provide this kind of veneer of legitimacy,
22 and also because of the principle of
23 lawyer/client confidentiality banks are unaware
24 of the identity of the client whose funds are
25 being moved through the client account, so their

1 use can help to circumvent banks' anti-money
2 laundering procedures because the account is
3 held in the bank in the name of the law firm and
4 so the names of the clients whose money
5 transfers through the account isn't known to the
6 bank.

7 Q And is that essentially what you describe when
8 you note the potential blind spot that that
9 blind spot being the ability to identify the
10 presence of funds in client accounts where there
11 is no legitimate underlying transaction? I'd
12 ask what do you mean by "legitimate underlying
13 transaction"?

14 A So this refers to a rule that the solicitor's
15 regulation authority have in their accounts
16 rules. And this rule states that payment into
17 and transfers or withdrawals from a client
18 account must be in respect of instructions
19 relating to an underlying transaction and the
20 funds arising therefrom. So yes, that is what I
21 mean by a legitimate underlying transaction. It
22 comes from that particular part of the SRAs
23 account rules and its difficulty, the blind spot
24 you talk about, is because it's difficult for
25 regulators to monitor and prevent that activity.

1 And the problem is that prohibiting something
2 doesn't necessarily prevent it, so they have
3 that account rule but it's difficult to see how
4 external regulators could monitor all the
5 transactions that go through client accounts in
6 all firms. This list, this regulation authority
7 regulates about 15,000 law firms so how can they
8 from that external position monitor all client
9 account transactions.

10 Q Thank you. And moving to the third category,
11 Dr. Benson, what can you highlight about the
12 cases under the corporate vehicles and offshore
13 accounts section for the Commissioner?

14 A So this was interesting because as I said
15 earlier the formation and management of
16 corporate vehicles is an area that is considered
17 one of the highest risks for money laundering,
18 so the 2017 UK national risk assessment assessed
19 the risk of criminals using UK and overseas
20 corporate structures to launder money as high
21 and stated also that corporate structures and
22 trusts are used in almost all high end money
23 laundering cases. So I allocated just two cases
24 to this category. So one involved the proceeds
25 of corruption. So the solicitor moved some of

1 these illicit funds into offshore trusts and
2 shell companies and the other involved the
3 solicitor transferring ownership of some hotels
4 that were used to house undocumented migrants to
5 an offshore company while the hotel owner was
6 under criminal investigation. They were the two
7 cases that I allocated to this category. So
8 this sample really doesn't reflect the concern
9 about the use of corporate vehicles in the way
10 that we might expect.

11 Q And that is why you go on to note at page 61
12 that there was little indication of use of the
13 corporate vehicle or offshore accounts as a
14 means of facilitation; is that right?

15 A Yeah, that's right. And the reasons for that, I
16 mean that might be because it doesn't happen,
17 but I think it's more likely that it reflects
18 the nature of the cases that are investigated
19 and prosecuted and convicted. So I think that
20 raises a number of questions that need to be
21 considered further, for example more complex
22 cases involving corporate vehicles and offshore
23 accounts and complex transactions less likely to
24 result in prosecution or in conviction and if so
25 is this due to their complexity and the

1 challenges of investigating transactions hidden
2 behind financial constructions whose purpose is
3 to provide secrecy and conceal ownership. So I
4 think the risk of money laundering through
5 corporate vehicles should be taken seriously and
6 the lack of convictions that I saw in the sample
7 I think gives us a lot of questions to think
8 about.

9 Q Thank you. Looking at the fourth category now
10 you've termed the legal and/or financial
11 services section, I don't intend to ask you
12 generally about it, but I'd like to look at one
13 case in particular. That is case number 11,
14 which starts at pages 64 and 65 of your book.
15 That is of Anthony Blok. Could you describe
16 that case for the Commissioner briefly.

17 A So yeah, so Anthony Blok was convicted in 2009
18 for money laundering offences related to
19 75,000 pounds that he paid in cash to court for
20 the bail of one of his clients who had been
21 arrested for money laundering. So Blok had
22 applied for bail for his client and subsequently
23 called his client's daughter as a witness to
24 provide evidence about the limited funds
25 available to the family to meet the bail

1 requirements. A few days later Blok deposited
2 75,000 pounds with the court cashier and when
3 questioned about its origins he said that he had
4 been given the funds outside the court by a man
5 that he didn't know and understood the funds to
6 be raised by family and friends over the
7 weekend. But CTV showed footage showed Blok
8 meeting the client's daughter and another woman
9 who handed him two bags of money, so the court
10 accepted that in the circumstances it was not
11 reasonable for that amount of money to have been
12 raised legitimately in such a short space of
13 time and that the false story provided by Blok
14 demonstrated that he knew or suspected that the
15 funds were from a criminal source.

16 Q And, Dr. Benson, as far as you're aware does the
17 UK have a rule that prohibits lawyers from
18 accepting cash?

19 A I'm not sure. I don't know the answer to that,
20 to be honest. I could check and get back to you
21 if you wish. I presume there must be some rule
22 about it or at least about the amount involved.
23 At least there must be rules under the money
24 laundering regulations. Whether there are
25 broader rules set by the profession I'm not

1 sure.

2 Q Thank you. And stepping back to look at all of
3 the cases more generally, what were the nature
4 of the predicate offences as described starting
5 at page 66 of your book that you saw with these
6 cases?

7 A So the majority of -- the majorities of the
8 cases involved drug trafficking and various
9 forms of fraud. So this included VAT fraud and
10 mortgage fraud. There was also one case
11 involving corruption by a political figure and
12 one case that would be categorized as
13 immigration crime.

14 Q And were there any types of cases that you did
15 not encounter that you might have otherwise
16 expected?

17 A So apart from the one case of corruption, none
18 of the cases involved what we might classify as
19 white collar or corporate crime. So none of the
20 cases, for example, involved corporate bribery
21 or insider trading or corporate fraud or the
22 offences by corporations or financial
23 institutions. And this again kind of raises
24 questions about what gets investigated and what
25 gets prosecuted, what gets convicted and what

1 doesn't. So it seems highly unlikely that those
2 kind of offences don't require the involvement
3 of professionals, especially with the amounts of
4 money that would be involved. And so, again,
5 does this mean that either this kind of
6 professional enabler or this kind of predicate
7 criminality is less likely to be investigated,
8 prosecuted or convicted. Are they perhaps more
9 likely to be addressed through regulatory
10 mechanism or are they able to slip through the
11 net completely. As I talked about above, there
12 was not many cases involving corporate vehicles,
13 so that is another type of case I might have
14 expect today see that I didn't so much.

15 Q And you say at page 68 that many of the
16 transactions were unsophisticated; is that
17 right?

18 A Yeah. I think we often imagine money laundering
19 to involve sophisticated processes and complex
20 financial arrangements, but many of the
21 transactions in these cases involved simple
22 transfers of money between account or the
23 purchase of a single or small number of
24 residential properties rather than complex
25 financial arrangements.

1 Q But you just stated that you would agree that
2 that doesn't necessarily mean that many or much
3 of money laundering is unsophisticated, we just
4 don't know what is being investigated and what
5 is being found; is that fair to say as well?

6 A Yeah, so again this raises questions about the
7 types of cases that are prosecuted of which
8 successful convictions can be secured. I
9 mentioned earlier about the problems that the
10 complexity of these types of cases pose to
11 investigators. Even relatively straightforward
12 conveyancing cases pose issues for investigators
13 because they don't understand the processes so
14 well, and so complex laundering transactions are
15 going to pose particular problems for
16 investigation. So the fact that many of the
17 cases involved less complex transactions might
18 tell us that these are less likely to be
19 prosecuted or less likely to be successfully
20 prosecuted. But it does also highlight that not
21 all money laundering involves complex
22 sophisticated transactions and with corporate
23 vehicles and stuff like that and simple
24 transfers of money between accounts and the
25 purchase of single or a small number of

1 residential properties, things like that can be
2 used to launder money and can lead to legal
3 professionals becoming involved in money
4 laundering.

5 Q Thank you. Can you tell the Commissioner
6 briefly about what you write in your book about
7 the impact of relationships, so whether that's
8 familial or co-workers or business relationships
9 or whether someone's acting as a broker, the
10 impact of those relationships that you saw on
11 the cases in your book.

12 A Yes, so I was interested in this relationship
13 between the lawyer and the client, the predicate
14 offender. Obviously the primary relationship
15 for all the cases is a lawyer client
16 relationship and this is central to the activity
17 in many ways. The actions carried out are
18 because the lawyer is carrying out services or
19 transactions for their client. And the
20 solicitor-client relationship can also provide a
21 cover for the solicitor to carry out illicit
22 transactions for the predicate offender and can
23 provide a superficial appearance of legitimacy
24 for their actions. But I was interested if
25 there was any other form of social relations

1 between the lawyer and the predicate offender.
2 The data that was available didn't allow
3 analysis of this in great detail, but for some
4 of the cases a degree of detail about the
5 relationship could be established, and for a
6 small number of cases there was a personal
7 relationship of some form. So, for example,
8 they were married or a previous partner or a
9 brother. And this clearly would provide another
10 dynamic, and as I said may influence the
11 decisions taken by the legal professional to
12 carry out transactions. And you mentioned
13 brokers. So a number of the cases indicated the
14 presence of what could be described as a broker
15 to the relationship. So by this I mean some
16 kind of third party who introduced the client to
17 the solicitor or in some way vouched for them.
18 So again the presence of this kind of broker is
19 going to influence the decisions that the
20 lawyers make and they may be more likely to take
21 on the client, for example, if there is somebody
22 vouching for them or some kind of third party.

23 Q Thank you. And, Dr. Benson, next I'd like to
24 turn more to kind of general questions on the
25 involvement of lawyers in money laundering. And

1 having reviewed these cases and discussed them
2 briefly today, what can you tell the
3 Commissioner about your main insights into the
4 risk of legal professionals becoming involved in
5 money laundering, any general insights that
6 you've drawn?

7 A So the nature of the services that lawyers
8 provide and the transactions that they carry out
9 are what makes lawyers useful and attractive to
10 people with criminal proceeds to launder.
11 Obviously you can't stop lawyers from providing
12 these services; that's part of their role. But
13 a lack of internal oversight over these
14 particular transactions or services and lawyers
15 being able to act autonomously within the
16 structure of the firm would allow them to more
17 easily take advantage of the opportunities for
18 money laundering that are provided by the nature
19 of their occupational role should they wish. So
20 that is one of the risk factors that I think is
21 involved. The nature and structure and culture
22 of the firm or practice in which they work may
23 also increase or change the risks of lawyer
24 involvement in money laundering. So to see how
25 this might work we can look at research and

1 theory or misconduct point within or by
2 organizations more generally and this shows the
3 way that organizational characteristics and
4 dynamics can shape offending behaviour. So this
5 relates kind of to organizational culture and
6 the size and complexity of a law firm and the
7 way that accountability, roles, responsibilities
8 and things like that are structured and
9 allocated. So all of these things will vary
10 across different law firms and they could all
11 play a role in how likely it will be that a
12 lawyer within that firm could be involved in
13 money laundering.

14 Q And at page 32 you write that lawyers are
15 described both as professional enablers and
16 gatekeepers. Can you explain what each term
17 means to the Commissioner, please.

18 A The gatekeepers is an internationally used term
19 that emerged in anti-money laundering discourse
20 I think in the 90s to refer to organizations and
21 individuals who can either block or facilitate
22 the entry of dirty money into the legitimate
23 financial system. So initially it referred to
24 banks and then it broadened to refer to
25 professionals such as lawyers, accountants,

1 et cetera and it became associated with the
2 individuals and businesses who fell under money
3 laundering regulations and obligations.

4 The term "professional enabler," which I've
5 mentioned a few times, is a predominantly UK
6 term. I think it was first used in policy
7 documents in the 2013 Serious and Organized
8 Crime strategy where it described professional
9 enablers as complicit, negligent or unwitting
10 professionals in the financial accountancy and
11 legal professionals that facilitate money
12 laundering. Gatekeepers is a more of a global
13 term. Professional enabler is more
14 predominantly a UK term.

15 Q And at page 70 you write that the terms such as
16 gatekeeper or professional enabler suggest a
17 homogeneity of actors, actions and relations
18 that do not exist. What do you mean by that?

19 A Just really that there can be a problem when you
20 use singular terms like that and those kind of
21 terms are obviously understandable in the policy
22 context to draw attention to a particular issue
23 and provide an easily recognizable term of
24 reference, but they can suggest that everything
25 for everything that falls under the term is the

1 same and kind of conflates a whole range of
2 actors and actions, and relations in a way that
3 is unhelpful for the purpose of analysis or
4 policy development. It's important to
5 understand the variation within these terms.

6 There's also resistance to the term
7 "professionals enablers" from the professions.
8 The research has shown that professionals find
9 the term "professionals enablers" to be divisive
10 and ultimately counterproductive because it
11 implies criminal intent rather than reflecting
12 the more inadvertent involvement of
13 professionals that can happen in some cases, so
14 there is some kind of resistance to the term
15 "professional enablers" from the professions.

16 Q Thank you. Dr. Benson, moving ahead a little
17 bit here looking at page 85, what can you tell
18 the Commissioner about what interviewees had to
19 say about financial incentives for lawyers
20 becoming involved in money laundering and how
21 did those interview comments mesh with your
22 study?

23 A So the general consensus was or is that the
24 lawyers become involved in facilitating money --
25 the general consensus within the interviews was

1 that lawyers become involved in facilitating
2 money laundering for direct financial benefit or
3 competitive advantage. So some of the
4 interviewees talked about greed, so talked about
5 lawyers being able to make money from working
6 with criminals in some way. And they also
7 talked about need, so investigators suggested
8 that in their experience this happened when
9 lawyers fell on hard times or kind of come up
10 against some kind of financial adversity or
11 personal problem. There was also the idea that
12 working for criminals in this way, helping them
13 with their money laundering, provided a steady
14 stream of income and access to a client base
15 that they wouldn't otherwise have had access to.
16 So that was a kind the general impression given
17 by the interviewees. From the data that I had
18 available to me it was really difficult to
19 determine with any certainty or precision the
20 precise degree of financial benefit that the
21 solicitors received, but there was some
22 indication in some of the cases and what it
23 suggested was -- what it suggested was that the
24 way in which lawyers benefit from their
25 involvement in money laundering varies. And

1 also that there was actually little evidence of
2 significant financial benefit in most of the
3 cases. So there were a couple of cases where
4 the lawyer appeared to get a significant
5 financial benefit, so a cut of the proceeds on
6 money from the sale of the property, for
7 example, but in others then the benefit appeared
8 to be no more than the standard fee they would
9 have received for carrying out the work. The
10 caveats with this, obviously, are that the data
11 I had available may only provide a partial
12 picture of the financial benefit received and
13 also that receiving no financial gain is not the
14 same as having no financial motive; they may
15 have expected more, for example. But that is
16 kind of what I saw in the cases.

17 Q Looking earlier on in your book at page 6, do
18 you ever have a view on whether it's barristers or
19 solicitors who are more often targeted by money
20 launderers, those terms of course being
21 litigators and solicitors here in Canada, but do
22 you have a view on that?

23 A So, yes. So on page 6 I talk about the fact
24 that the risk of money laundering, the focus of
25 anti-money laundering policies are more relevant

1 for solicitors because they handle client's
2 money and participate in certain transactions
3 and services and the UK money laundering
4 regulations and FATF recommendations apply to
5 independent legal professionals when
6 participating in financial or real estate
7 property transactions and are related to the
8 types of things that solicitors do. So while
9 barristers fall under the scope of anti-money
10 laundering regulations and are required to carry
11 out due diligence and report suspicions, these
12 kinds of transactions are more likely to be
13 carried out by solicitors. The risk of
14 barristers isn't something that I've looked at.
15 I know that there is increasing concern or
16 attention on the potential particularly for sham
17 litigation, for example, to be used for money
18 laundering, but the kind of comparative risks
19 isn't something that I've looked at and the
20 risks in relation to barristers isn't something
21 I've looked at specifically.

22 Q Yes. Thank you, and moving on to a final area
23 of questioning, Dr. Benson, I'd like to ask
24 about the issues identified and the framework
25 proposed in your book. One key item that you

1 discuss is a shared response, one that involves
2 both criminal justice and regulatory processes
3 to combat suspected professional involvement in
4 money laundering. Why do you recommend a shared
5 response and what can you tell the Commissioner
6 about that?

7 A So I am -- so I spoke earlier about the
8 different challenges and complexities of
9 criminal investigation and prosecution of
10 professionals and suspected of involvement in
11 money laundering. And there's also benefits
12 for -- there's also benefits of regulators
13 playing a role when a solicitor comes up in a
14 criminal investigation or when potential
15 involvement in money laundering is identified
16 through the regulators' routine monitoring
17 processes. This was something that law
18 enforcement personnel brought up and regulatory
19 personnel brought up, the kind of the benefits
20 of having regulators play a role in that shared
21 response. Because they have the specialist
22 knowledge and expertise. They have an
23 understanding of the profession. They have an
24 access to material that meet otherwise be not
25 accessible by law enforcement, and they also

1 have the ability to impose a broad range of
2 sanctions. And so this -- and also this then
3 would leave the predicate offender to be dealt
4 with through the police. So law enforcement and
5 regulators working together in a shared response
6 would allow a decision about where the criminal
7 or regulatory enforcement action should be taken
8 on a case by case basis, taking account of the
9 various factors of the case.

10 Q Thank you. And at least at this point have you
11 identified any challenges that exist with
12 respect to a shared framework?

13 A When I carried out my research there were
14 clearly problems in the relationship between law
15 enforcement and the solicitors regulation
16 authority, including a lack of communication and
17 respect and trust and a kind of a
18 misunderstanding of each of those roles and
19 objectives and modes of working, and so that
20 would have implications for this kind of shared
21 response. I think I believe that this is
22 improved since the time I carried out my
23 interviews and that there's more of a focus on
24 working together. In the UK there is a move
25 towards a more cooperative relationship between

1 the SRA and law enforcement than perhaps there
2 has been in the past, especially since the
3 formation of a specific anti-money laundering
4 team within the SRA and just generally the
5 greater prioritization that this has been given.

6 Q Thank you. At page 159 you develop an
7 analytical framework to further examine the role
8 of legal professionals in the facilitation of
9 money laundering. What can you tell the
10 Commissioner about this analytical framework
11 developed in your book?

12 A One of the aims of the book it to stimulate
13 further academic research in this area and
14 because it remains so underresearched and
15 there's clearly lots of scope for further
16 research, so I develop a framework to guide
17 further research and analysis in this area,
18 basically. And I base that on an idea that I
19 developed throughout the book that we need to
20 know more about the decisions that lawyers make
21 within their routine occupational roles that can
22 lead to the facilitation of money laundering and
23 the situational context that shape these
24 decisions. So the framework basically kind of
25 sets out various micro, meso, macro level

1 factors that could influence legal
2 professionals' action and decision-making and
3 suggests that empirical investigation and
4 analytical focus should be directed towards
5 these factors to fully understand them and how
6 they influence the actions and decision-making
7 of legal professionals.

8 Q And you go on starting at page 167 to make a
9 number of recommendations for controlling the
10 facilitation of money laundering by lawyers. I
11 just ask to clarify, you haven't considered the
12 legal or constitutional impediments that might
13 exist with respect to these recommendations; is
14 that correct?

15 A No, I don't specifically discuss those.

16 Q And you can't comment specifically on the
17 Canadian regime; is that fair?

18 A Yeah, that's fair. These are focused primarily
19 on the UK context.

20 Q So with that in mind and on a matter of
21 principles, to assist the Commissioner, what can
22 you suggest in terms of improvements with
23 respect to promoting compliance by legal
24 professionals?

25 A So yes, my overall argument in relation to the

1 recommendations is that the variation and the
2 nature of lawyer's involvement in money
3 laundering and the challenges and limitations
4 inherent in individual strategies means that
5 there can't be a single approach to controlling
6 it. So cooperative strategies to aid or
7 encourage compliance with both specific money
8 laundering regulations and the professional
9 standards more broadly are an important element.
10 So, for example, those responsible for ensuring
11 compliance should do what they can to help
12 individuals and firms that want to comply to do
13 this. This includes providing adequate and up
14 to date education, training and guidance on
15 regulations and on money laundering risks and
16 this training and guidance should take account
17 of the capacities of different types and sizes
18 of law firm to access it. Specific rules
19 address behaviours that might facilitate money
20 laundering should be as clear and easy to apply
21 as possible. And fostering a desire to comply
22 could involve highlighting the professional and
23 financial consequences of non-compliance but
24 also important I think is ensuring the
25 legitimacy of untrust in the regulatory process

1 in the eyes of the profession. So these
2 recommendations are based in wider research and
3 compliance. And the importance of the
4 profession having trust in the regulatory
5 prosocial security and believing its legitimacy
6 is an important factor in compliance and there's
7 various ways that this might be achieved.

8 Q Do you have any suggestions in terms of
9 enforcement? I note in your book you look at,
10 for example, increasing detection, improved
11 investigations or prosecutions and appropriate
12 sanctioning and, you know, looking at the time
13 maybe if you could just explain to the
14 Commissioner those that you feel most important
15 or that are top of mind for you with respect to
16 enforcement?

17 A Yes. The detection is most likely to occur
18 during a criminal investigation, I mean to the
19 primary offend or through routine monitoring or
20 investigation. So detection could be increased
21 by ensuring that the potential role of lawyers
22 and other professionals was taken into account
23 in all relevant criminal financial
24 investigations and also by increasing and
25 improving routine monitoring by regulatory and

1 supervisory bodies, and I've highlighted the
2 challenges with criminal investigation and
3 prosecution, so these things could be improved,
4 as I mentioned, through collaboration and
5 cooperation between regulators, police and
6 prosecuting authorities as well as using
7 investigators with appropriate skill sets and
8 things like that.

9 Q And the final category I'd ask, you discuss the
10 level of oversight that lawyers are subject to
11 whether that's with respect to trust accounts or
12 verifying the identity of shell companies. Is
13 there any top-of-mind improvements that you can
14 suggest with respect to monitoring and
15 oversight?

16 A Yes. So this what we've talked about before,
17 this idea that the oversight of client accounts,
18 conveyancing processes, entrusting company
19 service provisions within firms is important
20 because of the difficulties of external
21 oversights. For example, in one of the cases a
22 solicitor was said to have sole operational
23 control over the client's account, which seems
24 problematic, so if there was someone in the law
25 firm who didn't actually use a client account

1 who could be responsible for monitoring the
2 client's account and transactions involved that
3 could be an option. So it's about, I think,
4 thinking about the way that these particular
5 risky transactions that can have greater
6 oversight within the firms internally.

7 MR. DAVIS: Thank you so much, Dr. Benson.

8 Mr. Commissioner, those are my questions for
9 this witness.

10 THE COMMISSIONER: Thank you, Mr. Davis. Now, we
11 have three of the participants counsel who wish
12 to examine Dr. Benson. I'm just going to
13 indicate that we're going to have to conclude
14 our session today at 2:00, no later than 2:00.
15 But I don't want to unduly limit the examination
16 of any of the three participants. So I just
17 alert them to that fact. Maybe that we'll have
18 to adjourn and bring Dr. Benson back if we are
19 not able to finish within the time left to us
20 because as you are aware we have a session
21 commencing at 2:30 this afternoon and I want to
22 ensure everyone connected with that has the
23 opportunity for a break before we resume that.
24 All right. So --

25 MR. MCGOWAN: I wonder if it might make sense to

1 canvass the three participants for an updated
2 time estimate.

3 THE COMMISSIONER: I was about to do that.

4 MR. MCGOWAN: Thank you.

5 THE COMMISSIONER: So, Ms. Herbst, can you let me
6 know if your 25-minute allocation is sufficient
7 or more than you need or where you are at with
8 that.

9 MS. HERBST: I think 25 minutes is safe. I will try
10 to be more efficient and Mr. Davis has covered a
11 lot, but I just have some flipping back and
12 forth to do, so it may take a little bit of
13 time.

14 THE COMMISSIONER: Thank you. Mr. Westell.

15 MR. WESTELL: Mr. Commissioner, I plan to be between
16 5 and 10 minutes.

17 THE COMMISSIONER: Thank you. And Mr. Usher.

18 MR. USHER: Yes, the same, 5 or 10 minutes.

19 MR. COMMISSIONER: Thank you. It seems as though,
20 given those estimates, we'll be able to finish
21 within the time frame, so let's carry on.

22 Ms. Herbst.

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

24 **EXAMINATION BY MS. HERBST:**

25 Q And hello, Dr. Benson. I'm Ludmila Herbst. I'm

1 a lawyer for the Law Society of British Columbia
2 in this case. And I just have a few questions
3 that pick up, really, on themes that you
4 addressed already with Mr. Davis, very
5 helpfully. And so starting off with some
6 questions just about geographic scope and you
7 and Mr. Davis already had a couple of very
8 useful exchanges on that. I just want to
9 confirm a few points. In terms of your
10 empirical research for the book that you did and
11 that is exhibit 220, I understand that the
12 empirical work was carried out across the
13 jurisdictions of England and Wales and Scotland.
14 Is that correct?

15 A Yes.

16 Q And all interviewees that you engaged with were
17 based in the United Kingdom?

18 A Yes, that's correct, yes.

19 Q And of course we've heard this but just to
20 confirm, all 20 solicitors whose cases you
21 investigated for your book were based in the UK?

22 A They were, yes. Mostly in England and Wales and
23 I think one in Scotland.

24 Q Okay. Now, I think it's fair to say from that
25 but just to confirm that your book wasn't based

1 on any empirical research into Canada?

2 A Yes, that's correct.

3 Q Okay. Now, just turning to some more general
4 background for your book, and again you and
5 Mr. Davis have covered this somewhat in terms of
6 first of all your thesis, and I'm wondering if I
7 could ask Madam Registrar just to pull up that
8 document as well. I believe it's exhibit 218.
9 And that is the 2016 thesis that you did
10 Dr. Benson?

11 A Yeah.

12 Q Wonderful, thank you. And so a lot of -- I just
13 wanted to walk through a few portions of that
14 and portions really that were touched on as well
15 with Mr. Davis just to give everyone some
16 benefit in terms of that background. And if we
17 could turn to page 20 of that thesis which I
18 believe both the document number and the page is
19 the same -- perfect. Thank you. On that
20 page you've got 1.3 overview of the thesis and
21 then you describe going through some of your
22 chapters and toward the bottom of the page you
23 deal with the research problem and the
24 justification for the research that you were
25 doing. And so with apologies to the audience

1 for reading some of this out, I just want to
2 confirm that that accurately sets out the
3 background for the research that you undertook.
4 So I am down by where it says "chapter 3, 'The
5 Facilitation of Money Laundering By
6 Professionals.'" You indicate that that
7 analyzes the existing literature on the
8 involvement of professionals, and how its
9 conceptualized in official discourse and
10 academic literature.

11 "This chapter highlights the emerging
12 narrative within official discourse and
13 policy that suggests that the facilitation
14 of money laundering by legal and financial
15 professionals is a significant and growing
16 problem. It summarizes the existing
17 research and analysis in this area, and
18 highlights a number of themes that emerged
19 from examination of the literature. This
20 chapter concludes that the way in which
21 the facilitation of money laundering by
22 professionals is constructed within
23 official and academic literature has weak
24 empirical foundations, with the limited
25 academic attention and lack of research in

1 the area meaning that understanding of
2 this issue is not sufficient to
3 effectively challenge or support the
4 existing narrative."

5 And then you note that therefore you're setting
6 up here the research problem and justification
7 for the research.

8 "The need to add to our understanding and
9 in this area, challenge the official
10 narrative and address some of the existing
11 analytical gaps."

12 And that is a fair description of the basis and
13 the crux for the work that you undertook?

14 A Yeah, I think so. Yes, for the thesis, yeah.

15 Q Okay. So if I continue on to another
16 page within the thesis. On page 49 and again I
17 believe the page number on the text is the same
18 as the PDF. Toward the bottom of the page you
19 talk about -- and thank you that is perfect.
20 The last paragraph there, the paragraph starting
21 "more recently" talks about:

22 "More recently the FATF --"

23 That's the financial action task force?

24 A Yes.

25 Q "-- attempted to provide a comprehensive

1 categorization of 'the ML/TF [money
2 laundering and terrorist financing]
3 methods and techniques that involve the
4 services of legal professionals,' using
5 case studies."

6 And you have in brackets there "FATF 2013," and
7 I just wanted to confirm my understanding from
8 your bibliography is that a 2013 work called
9 *Money Laundering and Terrorist Financing*
10 *Vulnerabilities of Legal Professionals?*

11 A Yeah, I think -- yeah, believe so. Yes.

12 Q No need for Madam Registrar to turn to that
13 document. Just for the benefits of participants
14 here it's a document we sometimes hear about, so
15 it's appendix C to the overview report legal
16 professionals and accountants which is
17 publications which is exhibit 193, but no need
18 to go to it. I just wanted to touch here on you
19 talk about the case studies and the categories
20 that the FATF sets out. And if we could go to
21 the next page, page 50, you set out the
22 remaining categories and the bullet points and
23 then you note:

24 "A number of cases are provided to
25 demonstrate the techniques within each

1 category and to identify 'red flag
2 indicators' which legal professionals can
3 use to conduct effect due diligence.
4 However, there are several problems with
5 the case studies included which mean that,
6 while possibly serving a purpose in
7 highlighting potential risks to legal
8 professionals, this is not an adequate way
9 of properly evaluating the role of legal
10 professionals in money laundering. The
11 cases appear to have been 'shoehorned'
12 into the categories listed, often bearing
13 little resemblance to the technique
14 described or providing no proof that
15 laundering had occurred, rather than just
16 being highlighted as a suspicious
17 transaction or bad business practice."
18 You know the cases originated from a variety of
19 sources from multiple jurisdictions.
20 "There is little analysis of the cases or
21 reference to studies that have provided
22 significant analysis of empirical data."
23 And you note while some were taken from
24 Schneider's -- and you touched on Professor
25 Schneider's work with Mr. Davis -- "research on

1 legal professionals involvement in money
2 laundering in Canada the majority were based on
3 questionnaires submitted by FATF member
4 countries or regulatory bodies for the purpose
5 of this report or for previous typologies
6 reports. As such they may simply represent
7 cases that whoever has a been consulted chooses
8 to highlight." You have a reference there.

9 "Therefore any conclusions the report
10 makes can be considered to have a weak
11 methodological basis."

12 Does that fairly reflect your view of the
13 typology portion or the case study portion, I
14 should say, of the FATF report from 2013?

15 A Yes. So obviously the time when I wrote this I
16 must have kind of analyzed that report and
17 looked at that report and also looked at the
18 literature that talked about that report, yes,
19 that was obviously my conclusions about the
20 report at that time.

21 Q Okay. Now, this is also something that you and
22 Mr. Davis -- or this not so much, but what I'm
23 about to get to, I do recall from your testimony
24 when questioned by Mr. Davis, you noted in your
25 testimony that your focus has been on

1 understanding really what is happening in the
2 legal professional context as opposed to looking
3 at the scale in frequency at which things happen
4 within that context; is that right?

5 A Yes, that's right, yeah.

6 Q And if we could just -- to situate that, go to
7 page 89 of the thesis. Thank you. And down
8 there you've got a reference to scale of the
9 problem. And I'm just going to read out a few
10 portions of that. Certainly if you need time to
11 look over it more generally, please do, but I
12 think that reflects what we've just discussed.
13 You note:

14 "It is clear from the literature in
15 previous research in this area that there
16 is little understanding of the scale of
17 legal and professionals' involvement in
18 money laundering. While official and
19 academic literature describes as a growing
20 trend and something that should be of
21 significant concern, there is little
22 evidence to demonstrate the extent to
23 which professionals are involved in
24 facilitating money laundering."

25 You noted the acknowledgement of that. And a

1 few lines down you decided that estimating the
2 scale of the problem was not going to be one of
3 the aims of this research. And then flipping
4 over to page 90, the next page, and very fairly
5 you acknowledge at the end of that big
6 paragraph almost toward the end about seven
7 lines up:

8 "I came to the conclusion, therefore, that
9 if I could not accurately or with any
10 confidence estimate the scale of
11 professional involvement in money
12 laundering I should not make any attempt
13 to do so. What benefit would such an
14 estimate be with all the caveats it would
15 inevitably carry?"

16 Which is very understandable. And I just want
17 to confirm that is an extended description of
18 your reasoning for focusing really on trying to
19 understand what is happening as opposed to
20 looking at scale and frequency specifically?

21 A Yes. Absolutely, yes.

22 Q Okay. Now, just going on to what I believe is
23 exhibit 219, which is the chapter of a book that
24 you authored, the Palgrave handbook. Thank you
25 so much for having it pulled up so quickly,

1 narrative that legal and financial
2 professionals play a critical role in the
3 facilitation of money laundering, and
4 becoming increasingly involved in such
5 activity. However, there is a usually
6 little evidence given to support this
7 assertion and a notable lack of
8 understanding of this phenomenon."

9 Just echoing your description in the thesis that
10 again underpins part of the research
11 justification and rationale for embarking on the
12 work that you did; is that right?

13 A Yes. So exactly. Highlighting the lack of
14 evidence, the lack of understanding of this
15 phenomenon, yeah.

16 Q So on the next page, page 114 you talk about
17 halfway down the page you note a couple of
18 sources that you referred to when speaking with
19 Mr. Davis. There's some published empirical
20 research by Professor Schneider you refer to,
21 and a little bit further down to Cummings and
22 Stepnowsky from the United States. The bottom
23 of the page you note that your own research
24 represents the most in-depth qualitative
25 analysis in this area to date. And then turning

1 to page 115 just summing up and that's about six
2 lines down where I'm picking up.

3 "The involvement of professionals in money
4 laundering therefore clearly remains an
5 under-researched and poorly understood
6 area. As a result, the construction of
7 professional facilitation of money
8 laundering in official discourse and much
9 of the academic literature -- which sees
10 professionals as playing critical and
11 increasing role in the laundering of
12 criminal proceeds -- has weak empirical
13 foundations."

14 Again, that's reflective of why you are doing
15 your own research into this area and trying to
16 build up that body of knowledge?

17 A Yeah, absolutely.

18 Q Okay. And then just picking up a little bit
19 more on that at page 127 of the article again
20 just the last paragraph on that page I believe
21 is a reflection of the same concern or the same
22 research justification that has led you to be
23 involved in this area. You note there:

24 "These aspects of the anti-money
25 laundering policy and legislative

1 frameworks in the UK stem from the concern
2 that professionals play a critical role in
3 the facilitation of money laundering and
4 the resultant designation of such
5 professionals as gatekeepers. However,
6 this concern does not have a solid
7 evidentiary basis."

8 And you note again the role of professionals is
9 under-researched and poorly understood. So
10 again a good reason for you to be engaged in
11 this area going forward as well.

12 A Absolutely, yes.

13 Q Okay. So I just wondered and I'm not sure if
14 this is something that would have been apparent
15 in any event, and I'm sorry if I simply missed
16 this, but when you were doing your research into
17 the solicitors who were convicted in the UK in
18 relation to the facilitation of money laundering
19 did you look at whether others involved with the
20 money laundering schemes were also prosecuted or
21 convicted, or did you focus simply on the lawyer
22 involved?

23 A Yes, so my analysis focused on the lawyer. It
24 obviously referred to the predicate offender,
25 the primary person involved in the primary

1 criminality, but no, my focus was specifically
2 on the solicitors involved.

3 MS. HERBST: Okay. And I'm just checking my notes,
4 but Mr. Davis and yourself very nicely covered
5 off a range of topics which was very helpful.
6 So thank you those are my questions. Thank you
7 very much.

8 THE COMMISSIONER: Thank you, Ms. Herbst. Yes, now,
9 Mr. Westell, for the Canadian Bar Association of
10 British Columbia and the Criminal Defence
11 Advocacy Society.

12 MR. WESTELL: Thank you very much, Mr. Commissioner.
13 I only have a few areas to cover.

14 **EXAMINATION BY MR. WESTELL:**

15 Q Forgive me. I forget the exhibit number. If we
16 could go back to the book and particularly
17 page 129. I don't think that is the same copy
18 that I'm looking at. Looking for the chapter 8
19 "Criminal Justice and Regular Regulatory
20 Responses to the Facilitation of Money
21 Laundering." Is that -- you've got it now.
22 Page 129. There it is. Thank you. You'll
23 note -- please feel free, Dr. Benson, to refresh
24 your memory on where this is situated in the
25 book, but I only want to ask you about a very

1 discrete point, and the discrete point is
2 related to the this understanding that I may
3 have about how things work in the UK, but you
4 refer to in the second sentence on page 129:

5 "The Clementi Review raised a number of
6 concerns about the complexity of the self
7 regulatory regime and its lack of
8 transparency and accountability and
9 recommended that the representative and
10 regulatory roles held by professional body
11 be separated."

12 Can you describe those different roles and what
13 they mean in terms of representative and
14 regulatory roles for professionals bodies.

15 A Yeah, so what happened following the Clementi
16 Review those roles were split and the Solicitors
17 Regulation Authority was established so the
18 Solicitors Regulation Authority provides the
19 regulatory and disciplinary roles and the law
20 society for England and Wales maintains the kind
21 of the representative role.

22 Q In particular that is what I'm interest in is
23 what you understand the term "representative" to
24 mean. Does that mean, in other words, sort of
25 the role of advocating for lawyers?

1 A Yes. So advocating for lawyers. And I mean, in
2 terms of money laundering specifically --

3 Q No, no. Sorry, I should be clear. Just in
4 general I'm trying to determine because we have
5 a different system here, I would suggest. Our
6 law societies are almost completely concerned
7 with regulating in the public interest. So do I
8 have it right, then, that one of the downfalls
9 or one of the problems with the regulatory
10 structure that was identified in this Clementi
11 Review was that certain law society or bar
12 associations were taking on both roles at the
13 same time, both being advocates for lawyers and
14 regulating in the public interest within the
15 same body?

16 A Yeah, I believe so. I believe that was part of
17 the concern of the Clementi Review. It referred
18 to its lack of transparency and
19 accountability --

20 Q As well?

21 A So yeah, identified the need for the regulatory
22 role to be taken by a separate body.

23 Q I understand. Moving on just a couple of points
24 that are really maybe just obvious, but I want
25 to be clear just because there are differences

1 in academic titles and things like that in
2 different countries. Even though you've done
3 work adjacent to and around the legal profession
4 you yourself are not a lawyer; correct?

5 A Yes, correct.

6 Q You don't have a law degree?

7 A No.

8 Q Okay. And so you don't -- do you have awareness
9 based -- do you have an understanding based on
10 your work of the constitutional differences
11 between Great Britain and Canada?

12 A No, not hugely. My focus has been on the UK, so
13 no.

14 MR. WESTELL: That's fine. Those are my questions.

15 Thank you very much, Dr. Benson. Thank you very
16 much, Mr. Commissioner.

17 MR. COMMISSIONER: Thank you, Mr. Westell. Now, on
18 behalf of the Society of Notaries Public of
19 British Columbia Mr. Usher. Thank you.

20 MR. USHER: Thank you, Mr. Commissioner. Perhaps
21 before we start further to discussions your
22 staff this morning I'd like to seek to introduce
23 a document that hasn't been circulated and I
24 think Dr. Benson is aware of it. That is a
25 decision of the Solicitors Disciplinary Tribunal

1 in a matter of a solicitor named Andrew Tidd.
2 It's case number 11178-2013. This is mentioned
3 I think ten times in the book that has already
4 been introduced in evidence, so with your
5 permission I'd like that introduced and then
6 marked as an exhibit.

7 THE COMMISSIONER: Mr. Davis, do you take any
8 position on that?

9 MR. DAVIS: No, commission counsel doesn't oppose
10 leave being granted, Mr. Commissioner. Thank you.

11 THE COMMISSIONER: Thank you. Go ahead, Mr. Usher.

12 MR. USHER: Thank you. There we go. Thank you for
13 putting that up, Madam Registrar.

14 **EXAMINATION BY MR. USHER:**

15 Q Dr. Benson, I take it this is the case of Andrew
16 Tidd that you refer to in your book and I think
17 you have seen a copy of this document before; is
18 that correct?

19 A Yes. Yeah.

20 Q Okay. And this document, in your book you refer
21 to what you call transcripts. This has the
22 heading "Judgment." Is this what you mean by a
23 transcript when you discuss it in your book?

24 A It is, yeah.

25 Q So this is not a transcript of the oral hearing;

1 it's the decision of the tribunal?

2 A Yes.

3 Q Okay. Thank you. I just wanted to cover off a
4 couple of things here. First of all in this
5 one, you talk in your book the client in this
6 case was a -- and I'm sorry, I'm sure I'll
7 mispronounce this, a Nevzat Kocabey was
8 Mr. Tidd's client; is that correct?

9 A Yes.

10 Q And are you aware if whether Mr. Kocabey was
11 charged or convicted with money laundering?

12 A Gosh, I have to go back to -- but I believe he
13 was charged with the predicate criminality, the
14 drug trafficking drug offences.

15 Q Do you know if the properties involved were
16 subject to assets forfeiture, which is like our
17 civil forfeiture process?

18 A I don't know.

19 Q Okay. Do you know if -- the case, the judgment
20 makes the point that the funds provided to
21 Mr. Tidd's firm all came from what they call
22 "high street lenders and banks." Can you
23 explain to us what a high street lender and bank
24 is? It's not a term we are familiar with here
25 in Canada.

1 A I'm not sure. I presume just a normal bank. I
2 am not sure specifically what that refers to.

3 Q Okay. But all I'm saying is high street is
4 English term; is that correct?

5 A Yes, possibly, yes. So just like a local bank
6 you know, a bank that you get on the high
7 street. That possibly is an English term.

8 Q Do you know if the banks or the lenders were
9 charged or proceeded with money laundering in
10 this event in this matter?

11 A I don't know.

12 Q And the document states that Mr. Tidd fully
13 cooperated with police. Do you have any reason
14 to think that is not true?

15 A No.

16 Q Okay. And it makes it clear in the judgment
17 that the source of funds to him except for a
18 minor amount was all provided to him by these
19 high street banks?

20 A Okay.

21 Q Okay. Interesting this case was not searchable
22 on the Solicitor Disciplinary Tribunal site. Do
23 you know why that was?

24 A I don't know.

25 Q Okay. Any other further comments on the Tidd

1 matter? Did you do any background looking into
2 it? Are you aware what Mr. Tidd is doing now?

3 A No.

4 Q Okay. I'll suggest to you that he is practising
5 as a conveyancer in Liverpool. Do you have any
6 reason to suggest that is not the case?

7 A No.

8 Q Okay. And what I'm going to finish with, your
9 book talks about this lack of research. Just to
10 confirm, in fact you're not aware of or you are
11 not carrying out research on the effectiveness
12 of these regimes; is that correct? In other
13 words, we don't really know if the regime you've
14 talked about has made any difference at all to
15 money laundering?

16 A The anti-money laundering regime, no.

17 Q Okay. And so we don't have any research on the
18 effectiveness of the system as it applies to the
19 solicitors in the UK?

20 A We don't and that is kind of a difficult
21 question to ask, I think, to evaluate
22 effectiveness of the regimes. We don't have
23 that information.

24 Q Now, in your books on the home page of your
25 university document you say what you are working

1 on right now is -- you are working on a
2 facilitation and you are looking to get some new
3 areas of conceptual frameworks. Can you tell us
4 where you are going with this? What is
5 happening in your research since the book and I
6 see there is a second book also published in
7 2020. What is the most important thing to
8 research here from your point of view?

9 A So at the moment what is happening, so the
10 second book that was published was an edited
11 collection that I published in 2020. Since the
12 publication of the book I haven't done any more
13 empirical research. We are -- I'm primarily
14 consumed with teaching and administrative
15 responsibilities at the moment with the kind of
16 difficult situation that we are in in university
17 teaching, so I'm not actively doing any research
18 at the moment. Hopefully I'll get back to that
19 soon.

20 Q You've stated that there's a need for an
21 alternative framework for the conceptualization
22 and analysis in money laundering. Why is that?

23 A So this is something that I never kind of -- not
24 developed my research fully on this. This is
25 something that -- something that I have kind of

1 looked at. This is in terms of the way that
2 money laundering is conceptualized in academic
3 research is something that I'm interested in.
4 Kind of the complexities around definitions of
5 money laundering and if there's a better way of
6 kind of understanding, a better way of
7 rephrasing or reconceptualizing money laundering
8 and things like that.

9 MR. USHER: Okay. That's my questions.

10 MR. COMMISSIONER: Thank you, Mr. Usher. Anything
11 arising, Mr. Westell?

12 MR. WESTELL: No, Mr. Commissioner.

13 THE COMMISSIONER: Ms. Herbst?

14 MS. HERBST: No. Other than might I suggest that the
15 document that Mr. Usher had displayed, the
16 Solicitors Disciplinary Tribunal decision be
17 marked as an exhibit.

18 THE COMMISSIONER: Thank you. Yes, we will do that.
19 Madam Registrar.

20 THE REGISTRAR: Next exhibit number is 221.

21 **EXHIBIT 221: Solicitors Disciplinary Tribunal -**
22 **Case no. 11178-2013 - Hearing date: December 17,**
23 **2013**

24 THE COMMISSIONER: And Mr. Davis?

25 MR. DAVIS: Nothing arising, Mr. Commissioner. Thank

1 you.

2 THE COMMISSIONER: Thank you, Dr. Benson. You are
3 excused from any further testimony. We
4 appreciate your attendance.

5 **(WITNESS EXCUSED)**

6 THE COMMISSIONER: And I think that brings us to the
7 end of our evidence for today.

8 MR. MCGOWAN: Brings us to the end of the evidence
9 for this session, Mr. Commissioner. We are
10 reconvening at 2:30.

11 THE COMMISSIONER: Yes. That is quite right. I was
12 about to adjourn to tomorrow morning. So I'm
13 glad you reminded me. 2:30. We'll stand down
14 until 2:30.

15 THE REGISTRAR: Mr. Commissioner, before we adjourn I
16 want to remind counsel and participants to use
17 the Zoom link for the afternoon session.

18 THE COMMISSIONER: The same Zoom link?

19 THE REGISTRAR: Not the morning one. There is an
20 afternoon session link. I want to remind them.

21 THE COMMISSIONER: Thank you for that, Madam
22 Registrar.

23 THE REGISTRAR: So this hearing is adjourned until
24 2:30 p.m. Thank you.

25 **(PROCEEDINGS ADJOURNED AT 1:37 P.M.)**