

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

COMMISSIONER AUSTIN F. CULLEN

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October 15, 2021

(Via Videoconference)

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

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

MR. MARTLAND: Mr. Commissioner, at least from my part I don't know that we can hear you just yet. I wonder -- I'm not sure if it may be something where we need our tech expert to come and assist with your audio feed, Mr. Commissioner. It displays as muted right now, but even when it was unmuted we didn't get the audio feed.

THE COMMISSIONER: Can you hear me now?

MR. MARTLAND: Indeed.

THE COMMISSIONER: All right. It's knowing which button to push.

MR. MARTLAND: As long as there's no cat filter, Mr. Commissioner, we're content.

THE COMMISSIONER: I think we're good. Thank you. All right. Mr. McGowan.

MR. MCGOWAN: Yes, Mr. Commissioner. I believe Mr. Martland has a few brief comments to make before counsel for the province will address you with their closing submission.

THE COMMISSIONER: Yes, thank you.

1 MR. MARTLAND: Thank you, Mr. Commissioner. I'll be
2 about four or so minutes in addressing you on
3 this. There's a few preliminary matters I just
4 wanted to speak to briefly. As you and everyone
5 appreciate, this is the first of three days for
6 participants to make their closing submissions.
7 That is to say their oral closing submissions.
8 Almost all participants have already filed
9 written closing submissions that have all been
10 gathered and posted on the commission's website,
11 so those are publicly available.

12 There's a few points I wanted to address
13 really on the record and really for the sake of
14 any transcript readers for the sake of
15 consistency with respect to exhibits that are
16 being marked in the course of our process. And
17 so since we had our last hearing, which took
18 place on September 14th, we've had additional
19 documents that have been marked as exhibits.
20 Because we haven't been convening for actual
21 hearings, that's occurred by way of written
22 directions, Mr. Commissioner, that you've issued
23 and it's occurred after giving the participants
24 the opportunity to object or raise any issues
25 that they have with that.

1 Madam Registrar, if you're able to please
2 display a list of the documents that have been
3 marked as exhibits.

4 And, Mr. Commissioner, just to narrate, this
5 is fairly self-explanatory, but you'll see first
6 marked on September 27 by way of written
7 direction, four new exhibits: 1056, affidavit
8 number 2 of Mr. Scott; 1057, affidavit number 2
9 of Mr. Meilleur; 1058, Mr. Meilleur number 3;
10 1059 Mr. Meilleur number 4.

11 Next, marked by written direction on October
12 the 1st, an overview report with GPEB org
13 charts. Next, exhibits marked by written
14 direction on October the 8th, 1061 is a FATF
15 followup report on Canada that's very new.
16 1062, affidavit number 3 of Mr. Rudnicki. 1063,
17 affidavit number 4 of Mr. Rudnicki. I'm advised
18 that all but one of those is already up on the
19 commission website. The last one is simply
20 going through a redactions process, as we've
21 often had to do, but it should be addressed
22 soon. And finally for the comments I'm
23 addressing, Mr. Commissioner, as I said earlier
24 at the outset, we're on day one of three of
25 participants' closing submissions. Commission

1 counsel are not making closing submissions, as
2 you and the participants know, which we view as
3 being consistent with the role played by
4 commission counsel in many, if not all, public
5 inquiries.

6 As commission counsel, we are not in the
7 role of advocating for any particular outcome or
8 finding and the notion that we would engage in a
9 sort of final argument is one that we think may
10 be inconsistent with the proper role of the
11 commission lawyer. However, it might be worth
12 noting that on May 21st of this year we
13 circulated a 27-page written outline of issues,
14 which was prepared in response to the direction,
15 Mr. Commissioner, that you gave in ruling
16 number 32. That outline is one that does not in
17 any sense constrain participants in what they
18 can address, nor does it limit what you might
19 find or report on, Mr. Commissioner, in your
20 process, but it was intended to identify issues
21 for the participants and to permit them to
22 consider those and address them as they see fit
23 in their submissions. That outline,
24 Mr. Commissioner, isn't something that I'm
25 suggesting would need to be marked as an

1 exhibit, but it is something that we suggest
2 might be useful to have publicly available on
3 the commission website in the same area of the
4 website where the participants' written
5 submissions are posted.

6 I wouldn't expect that step to raise great
7 concern or interest for any participant, but I
8 did want to convey that. And also to see,
9 Mr. Commissioner, if you're in agreement with
10 the suggestion, barring any concerns or
11 objections from anyone, that we would make that
12 outline available publicly.

13 THE COMMISSIONER: All right. Is it your suggestion
14 that any objections should be raised now,
15 Mr. Martland?

16 MR. MARTLAND: I'd suggest that. It seems -- I
17 wouldn't expect it gives rise to concern. It
18 was circulated in May, and as I say, it's really
19 akin to a neutral identification of issues
20 document that participants have had for some
21 time. We simply haven't made it public yet, but
22 I don't see there are likely to be concerns
23 arising.

24 THE COMMISSIONER: All right. Well, I don't hear any
25 concerns or see any evidence of any concerns

1 being raised, and I'm quite content that the
2 document be put on the website as you've
3 suggested, Mr. Martland, so I think it would be
4 quite appropriate.

5 MR. MARTLAND: Thank you. And Mr. McGowan will be
6 largely helping to direct the traffic, if you
7 will, in terms of the submissions, so I'll pass
8 the baton to him.

9 THE COMMISSIONER: All right. Thank you,
10 Mr. Martland.

11 MR. MCGOWAN: Yes, Mr. Commissioner, I think we're
12 prepared to proceed with closing submissions,
13 and first in the batting order is counsel for
14 the province.

15 THE COMMISSIONER: Thank you.

16 **CLOSING SUBMISSIONS FOR THE PROVINCE OF BRITISH**
17 **COLUMBIA BY MS. RAJOTTE:**

18 Thank you. Mr. Commissioner, over eight
19 months of hearings the commission has heard
20 evidence regarding potential vulnerabilities and
21 money laundering risks across a multitude of
22 economic sectors in BC. The commission has
23 heard evidence about enforcement efforts and
24 provincial regulatory responses created to
25 address this pressing issue. Despite these

1 efforts, money laundering vulnerabilities
2 persist in BC.

3 As the province considers next steps in its
4 AML efforts, the work of this commission will
5 provide valuable guidance regarding the
6 hallmarks of effective, efficient and viable AML
7 initiatives. While the evidence before the
8 commission was diverse and extensive, broad
9 themes emerged. First, to effectively address
10 the risk of money laundering, it is necessary to
11 understand the scope and magnitude of the
12 problem. It is evident that having access to
13 reliable and easily searchable data coupled with
14 the capability to analyze that data is
15 fundamental to any AML initiative. For example,
16 BC's real estate and financial service sector
17 regulators emphasize the data gaps that
18 currently exist and how that hinders their
19 ability to proactively regulate in the public
20 interest. Improved data quality and data
21 management tools would help regulators and other
22 enforcement bodies better understand risk in
23 their respective sectors and take the requisite
24 steps to mitigate that risk.

25 Second, regulators and enforcement bodies

1 must have a clear mandate and understanding of
2 their respective roles and responsibilities
3 regarding AML initiatives. Many provincial
4 regulators do not currently have an explicit AML
5 mandate, though there is a recognition that
6 regulators have an important role to play in
7 combatting money laundering. In determining the
8 nature and extent of those roles, guidance can
9 be derived from other jurisdictions where the
10 evidence suggests that having a dedicated AML
11 mandate allows agencies to better understand the
12 relevant issues and develop skills and expertise
13 specific to financial crime.

14 Third, effective AML solutions must be
15 flexible and able to adapt to the changing
16 criminal landscape. It is necessary to consider
17 past events, to recognize that at times things
18 could have been done differently and to learn
19 from those experiences. At the same time, a
20 successful AML regime should not be overly
21 wedded to any particular view but instead
22 flexible and responsive.

23 Finally, an effective AML response is one
24 grounded in a collaborative approach which
25 maximizes information sharing opportunities.

1 While collaboration between provincial
2 government bodies is important, the evidence
3 makes clear that a comprehensive and successful
4 AML strategy requires collaboration with
5 non-government regulators, the province's
6 federal counterparts and the private sector.
7 With these broad themes in mind, the province
8 will highlight some recent initiatives and
9 current challenges across the various sectors.
10 I will first speak to the real estate and
11 corporate sectors and then Ms. Hughes will
12 address the gaming sector.

13 The province has taken steps to foster a
14 more collaborative regulatory approach in the
15 real estate and financial services sectors. A
16 significant recent initiative is the interaction
17 of legislation to combine the Office of the
18 Superintendent of Real Estate, the Real Estate
19 Council of BC, and the BC Financial Services
20 Authority to create a single regulator for the
21 financial services sector, including real
22 estate. The creation of a single real estate
23 regulator responds to recommendations made by
24 Dan Perrin in his "Real Estate Regulatory
25 Structure Review" report. The Maloney Report

1 also noted that restructuring real estate
2 regulation would reduce silos and provide a
3 broad-based regulatory platform for the real
4 estate sector in the context of the broader
5 financial sector.

6 The amalgamation of BCFSA with OSRE and
7 RECBC will centralize expertise and enable more
8 efficient and coordinated oversight of BC's
9 financial services sector, including real
10 estate. The integration will simplify
11 accountabilities and enhance regulatory
12 oversight for more effective and efficient
13 business processes, investigations and
14 enforcement. Blair Morrison, CEO of BCFSA,
15 testified that the BCFSA is on a journey to
16 becoming a modern, efficient and effective
17 regulator that is professionally managed and
18 operated. Although the merger did not arise in
19 response to money laundering concerns, it
20 presents opportunities to strengthen the
21 province's AML work in the sector through
22 increased information sharing and collaboration.
23 While the BCFSA does not presently have an
24 expressed AML mandate, it undoubtedly has a role
25 to play in combatting money laundering.

1 Mr. Morrison testified that having a clear AML
2 mandate is important, as it allows a regulator
3 to define the space that it regulates and to be
4 clear on what it requires from others. The
5 evidence is that any AML mandate given to BCFSA
6 should complement its existing regulatory and
7 supervisory activities and not duplicate the
8 roles of FINTRAC and police of jurisdiction.

9 Witnesses before this commission were
10 united in their view that any expansion of
11 BCFSA's mandate must be supported by appropriate
12 resources and enhanced by data collection --
13 enhanced data collection and analytics. Further
14 submissions with respect to the BCFSA and the
15 move to a single real estate regulator are found
16 in the province's closing submission on the
17 non-gaming sector at paragraphs 11 through 14
18 and 48 through 53.

19 Many witnesses before this commission spoke
20 about beneficial ownership disclosure. Although
21 one participant questioned the effectiveness of
22 beneficial ownership transparency in combatting
23 money laundering, the preponderance of evidence
24 before the commission supports the conclusion
25 that disclosure of beneficial ownership is an

1 important means of disrupting money laundering.
2 For example, Peter Dent with Deloitte testified
3 that corporate anonymity such as the use of
4 shell companies allows a beneficial owner to
5 distance themselves from the predicate offence
6 and also allows them to increase the complexity
7 and expense of conducting an investigation.
8 This evidence is consistent with the Maloney
9 Report, which found that disclosure of
10 beneficial ownership is the single most
11 important measure that can be taken to combat
12 money laundering.

13 A significant achievement in this area of
14 beneficial ownership disclosure is BC's *Land*
15 *Owner Transparency Act*, also referred to as
16 *LOTA*, which came into force in November of last
17 year and creates disclosure requirements to
18 assist in the identification of beneficial
19 owners of land in BC. *LOTA* aims to prevent
20 entities such as trusts, corporations and
21 partnerships that own land from using these as
22 vehicles to disguise the underlying beneficial
23 owners of property, which, in turn, should
24 disrupt money laundering in BC.

25 In collaboration with the federal

1 government, the province has undertaken work to
2 support continued improvement to *LOTA* and
3 facilitate information sharing on this
4 initiative with other provinces and territories.
5 This work was facilitated through the federal
6 provincial ad hoc working group on real estate,
7 which was created in December of 2018 to explore
8 issues related to fraud, money laundering, tax
9 evasion and speculation in BC's real estate
10 sector to better coordinate and align policy and
11 operations.

12 The working group prepared a final report
13 to finance ministers that's dated January of
14 2021 that was approved by both the federal and
15 BC ministers of finance and circulated to
16 finance ministers in other provinces and
17 territories. That final report has been marked
18 as exhibit 706 in this inquiry.

19 Echoing the findings of the Maloney Report
20 and the evidence before this commission, the
21 working group's analysis highlighted how
22 improving transparency of beneficial ownership
23 is a key issue in addressing money laundering in
24 real estate. The working group identified key
25 considerations and challenges with setting up

1 *LOTA*, including challenges around verification
2 of beneficial owners, privacy and protection of
3 vulnerable individuals, and the scope of
4 corporate interest holders you should *LOTA*. The
5 working group formulated a list of suggested
6 items for BC to consider further, including,
7 among other things, facilitating *LOTA*'s data
8 with other agencies to allow for data analytics.
9 The province's submissions on the non-gaming
10 sectors provide further details about *LOTA* and
11 the federal-provincial ad hoc working group on
12 real estate at paragraphs 58 through 74.

13 The province is also collaborating with its
14 federal, provincial and territorial partners in
15 addressing corporate beneficial ownership
16 disclosure through BC's participation in the
17 federal-provincial-territorial, or FPT, working
18 group on beneficial ownership transparency. In
19 December of 2017, based on FTP Working Group
20 recommendation, the ministers approved an
21 agreement in principle to undertake a phased
22 approach to addressing corporate beneficial
23 ownership. In May of 2019 BC introduced a
24 requirement for corporations to maintain
25 information about their beneficial owners within

1 their corporate records office which became
2 effective October of last year. BC also
3 implemented a ban on bearer shares being used in
4 the province. With these changes, BC became the
5 first province to pass legislation to establish
6 a transparency register and achieved the first
7 step in the FPT Working Group's phased approach.

8 As part of the second phase, in January of
9 last year, the Ministry of Finance issued a
10 consultation paper on a public beneficial
11 ownership registry. The submissions received
12 focused on a range of topics, including public
13 access to the registry and efficient collection
14 of data. This commission similarly heard
15 evidence about the various and at times
16 competing considerations that arise in creating
17 a corporate beneficial ownership registry. The
18 province looks forward to the commission's
19 guidance in this area.

20 One theme that emerged in the evidence is
21 importance of harmonization of corporate
22 beneficial ownership registries across Canada.
23 As James Cohen, Executive Director of
24 Transparency International Canada, testified,
25 harmonization is necessary in order to prevent

1 criminals from finding the easiest path that
2 there is. At a broader level, Chris Taggart,
3 Co-founder and CEO of OpenCorporates, explained
4 that because money laundering is a global
5 problem, BC should not treat its register as a
6 silo but rather ensure that data can be
7 connected to data collected elsewhere in the
8 world. Further submissions about the work being
9 done by the province on corporate beneficial
10 ownership transparency are found at paragraphs
11 90 through 94 of the province's closing
12 submissions on the non-gaming sectors.

13 The commission heard evidence about the
14 work being done by the Finance, Real Estate and
15 Data Analytics Unit in the Ministry of Finance
16 to build its data holdings and provide data
17 analytic services. The short to medium term
18 focus of this group is to provide data analytic
19 support within the Ministry of Finance. Once
20 additional capacity is in place, FREDA will
21 consider issues such as AML. Christina Dawkins,
22 Senior Executive Director in the Ministry of
23 Finance, explained that this work would not be
24 focused on detecting particular transactions or
25 bad actors but rather on supporting

1 evidence-based policy analysis and using
2 statistical information to discover trends and
3 draw general conclusions about activity and
4 potential policy responses.

5 Dr. Dawkins explained how FREDA has faced
6 challenges in obtaining data due to various
7 legislative restrictions, particularly with
8 respect to tax data. Despite these challenges
9 FREDA has been able to obtain data from a
10 variety of difference sources as set out in
11 further detail at paragraph 46 of the province's
12 closing submissions.

13 The Ministry of Finance is also engaged in
14 various other initiatives flowing from the
15 Maloney Report recommendations, including
16 developing options and recommendations for
17 government on modernizing the *Mortgage Brokers*
18 *Act* about and considering whether BC should
19 implement a framework for the regulation of
20 money services businesses. The province's
21 submissions with respect to these initiatives
22 are set out at paragraphs 54, 57 and 101 through
23 103 of its closing submissions on the non-gaming
24 sectors.

25 Finally, the commission heard evidence

1 about enforcement efforts to address money
2 laundering in BC as well as in other
3 jurisdictions. The evidence is that an
4 effective enforcement regime requires that the
5 province's AML efforts be pursued in
6 coordination and in conjunction with federal
7 engagement. We see the type of successful
8 collaboration with the Joint Illegal Gaming
9 Investigation Team, or JIGIT, which was
10 established by the province in April of 2016 and
11 brings together members of law enforcement and
12 the Gaming Policy and Enforcement Branch. The
13 experiences of other jurisdictions also provide
14 guidance as to the hallmarks of effective
15 enforcement regimes and insight as to the
16 potential pitfalls that ought to be avoided.
17 The province's submissions with respect to
18 enforcement are set out in paragraphs 119 to 157
19 of its closing submissions on the non-gaming
20 sectors.

21 I will now turn it over to Ms. Hughes for
22 the province's submissions with respect to the
23 gaming sectors.

24 THE COMMISSIONER: Thank you, Ms. Rajotte.

25 Yes, Ms. Hughes.

1 **CLOSING SUBMISSIONS FOR THE PROVINCE OF BRITISH**
2 **COLUMBIA BY MS. HUGHES:**

3 Thank you, Mr. Commissioner. Turning now to
4 the gaming sector. Over the course of the past
5 month we've heard extensive evidence on what has
6 transpired in particular in the gaming industry
7 in order to identify, particularize and respond
8 to money laundering issues that have arisen. As
9 the regulator responsible for the overall
10 integrity of gaming in the province, GPEB, or
11 the Gaming Policy Enforcement Branch, was a key
12 actor in the events relevant to the commission's
13 terms of reference in that sector.

14 And it comes as no surprise given the
15 evidence we've heard that at times GPEB and the
16 BCLC, the British Columbia Lottery Corporation,
17 held different views on both the nature and the
18 scope of money laundering that could or was
19 occurring in BC casinos and differing views on
20 what steps ought to be taken at different times
21 to address those issues. But GPEB and BCLC
22 agreed on one thing, among others, but
23 principally that active engagement from law
24 enforcement was necessary to ensure the
25 disruption of organized crime and the deterrence

1 of money laundering and both of those
2 organizations sought to engage law enforcement's
3 assistance throughout the material times. And
4 what we saw through the evidence was that when
5 all three of these entities worked together, law
6 enforcement, GPEB, BCLC, and of course with the
7 support of service providers, meaningful
8 progress and meaningful efforts to combat money
9 laundering was and, most importantly, continues
10 to be made.

11 Before engaging the substance of our
12 submissions on the gaming sector I'd like to
13 step back for a moment and make somewhat of an
14 overarching submission on the standard that this
15 commission ought to apply when making findings
16 of fact with respect to the acts or omission of
17 the various entities involved in the sector.
18 And these comments apply in our submission not
19 just to GPEB or government actors but to all
20 participants and all individuals who are
21 involved in the underlying events.

22 So as a starting point here we note that of
23 course while the commission's mandate does
24 include the potential to make findings of
25 misconduct, the province submits that that

1 should not be the principal focus of the
2 inquiry. This commission's most important work
3 will be the recommendations it makes towards a
4 path forward. And nonetheless in recognizing
5 that findings about past acts or omissions will
6 need to be made in order to inform those future
7 recommendations, the focus of that analysis
8 needs to be on what the individual or
9 organization in issue knew or what information
10 they had available to them at the relevant
11 times. And so here we say that care needs to be
12 taken not to impute knowledge of future events
13 to actors in the past. And with respect to GPEB
14 and the many public servants working for GPEB
15 over the years, this includes bearing in mind
16 that they could only exercise the powers that
17 were granted to them under the *Gaming Control*
18 *Act* and the regulation at the various points in
19 time. Their actions ought not to be viewed, we
20 say, through the lens of hindsight or in light
21 of subsequent amendments to the act. Further,
22 where legal advice was sought and obtained, this
23 also, we say, bears heavily on the
24 reasonableness of the actions taken or not
25 taken. The issue is not whether that advice was

1 right or wrong. And so in taking the steps it
2 did, we say that GPEB and its employees acted in
3 good faith and reasonably relied on the legal
4 advice, for example, with respect to the
5 limitations on their powers and their authority
6 to investigate money laundering and proceeds of
7 crime. GPEB was entitled to rely on that advice
8 given and ought not to be faulted or criticized
9 for doing so.

10 Now, the province expects that over the
11 next three days you will hear various instances
12 particularly with respect to the gaming sector
13 where participants have different
14 interpretations of or competing views of the
15 evidence. The province has attempted to
16 highlight what individuals or entities believed
17 or understood at the relevant times. It is not
18 the case that the evidence we reference in our
19 closing submissions and our reply submissions is
20 at all instances tendered for the truth of the
21 facts asserted but rather to show what the
22 individual actors understood or perceived to be
23 the case, as that is what we say informs the
24 reasonableness of their actions. It will not
25 come as a surprise that in certain instances

1 what GPEB representatives understood or
2 perceived to be BCLC's position on an issue may
3 not in fact have been BCLC's position, and the
4 converse is also true. Again the issue here is
5 looking at what reasonably these actors
6 understood and believed at the time.

7 And one thing that is clear from the
8 evidence adduced over the course of this inquiry
9 is that there are multiple competing
10 interpretations of most of the key events and of
11 course it is for the Commissioner yourself to
12 determine which findings can be made based on
13 the preponderance of the evidence that's being
14 adduced.

15 And here the key point is that an entity or
16 an individual's actions ought to be considered
17 based on the available information available to
18 them at the relevant time, their understanding
19 of that information and the reasonableness of
20 the conclusions they drew from and actions they
21 took based on it. And of course there will be a
22 range of reasonable options that could have been
23 undertaken at any given point in time.

24 And so with those preliminary comments, I'd
25 like to now turn briefly to the statutory

1 framework and a very high level overview of the
2 key actors in the gaming sector. And that
3 overview of the legislative framework and these
4 actors is set out in the province's closing
5 submissions in paragraphs 4 through 38. And you
6 will also have, Mr. Commissioner, as appendix A
7 to our submission the legislative history of the
8 *Gaming Control Act* from 2002 to present and then
9 in appendix B we have provided a graphic that
10 attempts to illustrate the various ministries,
11 ministers, deputy ministers and the like that
12 have had responsibility for the gaming portfolio
13 over the years.

14 With respect to today's submission I'll
15 focus on a few key points and those are the
16 points that guide the roles and responsibilities
17 that GPEB and BCLC primarily exercised under the
18 legislation. And here we start with GPEB and
19 the General Manager, who has specific
20 responsibilities under the act. And these are
21 set out in more detail in our submission at
22 paragraph 6 and the references to section 27-2
23 of the *Gaming Control Act*. Some of those key
24 responsibilities for the General Manager to
25 advise the minister on broad policy standards

1 and regulatory issues under the minister's
2 direction, to develop, manage and maintain the
3 government's gaming policy and to establish
4 public interest standards for gaming operations.
5 And this includes but of course isn't limited to
6 extending credit, advertising and the types of
7 activities that are allowed in gaming
8 facilities.

9 Now, BCLC has a complementary role of
10 course under the statute, and the reference here
11 is to section 7 of the *Gaming Control Act*, which
12 gives BCLC a broad mandate and a broad scope of
13 responsibility for the conduct and management of
14 gaming on behalf of the government, and so this
15 puts BCLC effectively in the role of an
16 operating mind when it comes to gaming in BC.
17 It's important to note of course that BCLC is
18 also a reporting entity under the federal
19 *Proceeds of Crime (Money Laundering) and*
20 *Terrorist Financing Act*. GPEB's not a reporting
21 entity under that statute. And one of the other
22 things that falls under BCLC's responsibility
23 for the conduct and management of gaming is
24 contractual arrangements to enter into,
25 contractual arrangements with service providers

1 and to establish the standards, policies and
2 procedures that apply. And so BCLC contracts
3 with service providers through operating service
4 agreements and those agreements, among many
5 other things, contractually obligates service
6 providers to abide by the rules set by BCLC.

7 And so I mention sort of the breadth of
8 BCLC's role because it ties back into the role
9 of the General Manager when you look at section
10 27-4 of the act which expressly prohibits GPEB's
11 General Manager from conducting, managing,
12 operating or presenting gaming, and so we see
13 there how we carved out of the act, carved out
14 the separate spheres of responsibility for GPEB
15 and the General Manager versus BCLC.

16 Another important point to bear in mind,
17 Mr. Commissioner, is that at all times before
18 November 2018 ministerial approval was required
19 before the General Manager could issue a
20 directive to BCLC under section 28 of the act.
21 Now of course following amendments that occurred
22 in November of 2018, the GM can effectively
23 unilaterally issue directives to BCLC without
24 first obtaining ministerial approval. But it's
25 important to bear that important amendment in

1 mind when we're looking at past conduct.

2 There are also additional amendments made
3 to the gaming act in November of 2018 that now
4 also permit the General Manager to request the
5 person immediately leave a gaming facility and
6 forbid them from entering the premises for a
7 period if they have reason to believe that the
8 person is undesirable. And so, again, before
9 these amendments were made, that powers to ban
10 patrons who were deemed undesirable was one that
11 fell solely within BCLC's sphere of
12 responsibility. Now of course it can be
13 exercised by both.

14 I'll turn now to some of the more
15 substantive submissions that the province makes
16 in respect of this sector. And here I will
17 loosely arrange my submissions from the same
18 themes as Ms. Rajotte touched on in her
19 submissions. And those include the following
20 four general themes. So the first is the need
21 for clear mandates and the understanding of the
22 respective roles and responsibilities of the
23 different stakeholders. The second is the
24 importance of understanding the nature and scope
25 of the issue in order to be able to effectively

1 address it. Third I'll speak briefly to the
2 need to learn from past experiences and for
3 stakeholders in gaming, but really in any sector
4 as well of course, to be flexible and willing to
5 adapt in responding and going forward. And then
6 finally that any effective AML response has to
7 be and is one that is grounded in a
8 collaborative approach that maximizes, among
9 other things, information sharing opportunities.

10 So turning first to the need for clear
11 mandates and understanding the respective roles
12 and responsibilities. One of the things that we
13 saw develop in the course of the evidence was
14 that as the awareness of and concerns related to
15 money laundering grew, so too it seems did the
16 uncertainty about where the borders lay between
17 BCLC and GPEB's respective roles. And the
18 commission heard evidence about multiple
19 instances where the lack of clarity between BCLC
20 and GPEB's respective mandates and
21 responsibilities affected the approach being
22 taken. And I won't go through all of those
23 instances in the interest of time, but we'll
24 draw your attention, Mr. Commissioner, to three.

25 First relates to implementation of phase 3

1 of GPEB's AML strategy. This is in the 2011 to
2 2013, 2014 time frame and so one of the issues
3 that needed to be resolved before that phase
4 could move forward was the extent to which the
5 regulatory interdiction or having more regulator
6 involvement on the ground, so to speak, the
7 extent to which that would have required GPEB to
8 insert itself into BCLC's conduct and manage a
9 sphere of responsibility or role.

10 Mr. Meilleur also testified that he was
11 concerned that this concern about the proper
12 boundaries of the two entity's roles and
13 responsibilities was one of the factors that
14 influenced the AML X-DWG's consideration of
15 using conditions of registration as an AML
16 control. And we addressed this in paragraph 105
17 of our submission. Mr. Johma also explained
18 that imposing specific conditions on
19 registration restricting the acceptance of cash
20 could in his view infringe on BCLC's mandate.
21 And these concerns are, we note, consistent with
22 the broader legislative scheme when it comes to
23 conditions of registration. Section 56(3) of
24 the act is apposite here and that section needs
25 to be interpreted in a manner that takes into

1 account and respects BCLC's conduct and manage
2 role and BCLC's power to enter into agreements
3 with service providers and impose the rules that
4 apply to them, including with respect to
5 handling of money. And we deal with that point
6 in more detail, Mr. Commissioner, in paragraphs
7 108 to 110 of our submissions in the gaming
8 sector.

9 And then the third example I'll provide
10 relates to Mr. Mazure and his testimony that he
11 was concerned that due to the wide ranging
12 nature of some of the recommendations that came
13 out of the Malysh Report the resulting proposals
14 may also have entrenched on BCLC's conduct and
15 manage role, and we deal with that in more
16 detail at paragraph 119 of the gaming
17 submission.

18 Another matter that emerges from the
19 evidence before this commission was that GPEB
20 was concerned that if it took certain steps, and
21 one of the key steps here was the issue around
22 whether with GPEB ought to have been conducting
23 patron interviews, that that may encroach on
24 BCLC's conduct and manage role. And Mr. Vander
25 Graaf's testimony was that he understood that

1 interviewing patrons about their source of funds
2 fell outside of GPEB's statutory authority and
3 that activities such as this surrounding source
4 of funds declarations and the like were the
5 responsibility of BCLC under its conduct and
6 manage role. Mr. Scott also testified that this
7 uncertainty about the boundaries of the roles
8 was a factor, as I noted earlier, in GPEB not
9 proceeding with phase 3 of its AML strategy at
10 an earlier point in time.

11 And I'd just like to pause for one moment
12 here, Mr. Commissioner to address two small
13 evidentiary points. The first just to correct
14 the record here, the first is in respect of
15 Mr. Scott and Mr. Graydon's evidence. The
16 province here relies -- and this goes to the
17 point of whether or not BCLC was opposed to GPEB
18 conducting patron interviews again in the 2011
19 to 2013 time frame. And here the province
20 relies on Mr. Scott's evidence that Mr. Graydon
21 told him BCLC was opposed to GPEB conducting
22 interviews directly with casino patrons about
23 the source of their funds, and that's in
24 paragraphs 82 and 83 of the province's
25 submission in the main. In paragraph 53 of its

1 reply, BCLC asserts that Mr. Graydon denied that
2 this occurred. In fact Mr. Graydon's evidence
3 was that he didn't recall.

4 And the second small clarification to make
5 on the evidence here is with respect to BCLC's
6 interpretation of Mr. Scott's evidence in
7 paragraph 67 of BCLC's reply. Here BCLC
8 suggests that Mr. Scott's evidence was that he
9 understood GPEB could interview patrons where
10 appropriate, be more fulsome, reference to
11 Mr. Scott's evidence would be that what he
12 said -- what he testified to was that he
13 understood that GPEB investigators could
14 interview the patrons when investigating
15 regulatory offences or at law enforcement's
16 request if they were assisting with *Criminal*
17 *Code* offences. And I'll just refer you to
18 paragraph 82 of the province's submission in the
19 main where you'll find the footnoting for that.

20 And then the final point, a final
21 illustration I will provide as to the importance
22 of clear mandates and the method of having a
23 clear mandate arises from a comparison of the
24 IIGET and the JIGIT endeavours, and so one of
25 the benefits that JIGIT has is that its mandate

1 is clear. Its mandate is to provide a
2 dedicated, coordinated, multi-jurisdictional
3 investigative and enforcement response to both
4 illegal gambling and unlawful activities within
5 BC gaming facilities. And so that clearly
6 defined mandate that JIGIT has stands in
7 contrast to what I think we can fairly draw from
8 the evidence surrounding the IIGET initiative
9 was that the lack of a clear mandate there --
10 principally a clear mandate to address illegal
11 activities occurring inside BC casinos was
12 problematic. And so when you look at the IIGET
13 versus JIGIT, we see the importance of having a
14 well-defined mandate.

15 Turning next to the second theme I
16 indicated earlier, and this is around the need
17 to understand the nature and scope of a problem
18 to effectively address it. And the province
19 says here when you look at this retrospectively,
20 one of the issues that hampered stakeholders'
21 early response to money laundering was divergent
22 views on the nature and scope of the problem.
23 And so there are three areas where we note this
24 occurred, the first being whether a wealthy
25 patrons and gambling losses negated potential

1 money laundering, the second being with respect
2 to the level of proof that was required with
3 respect to whether suspicious cash could be
4 proceeds of crime before making a further
5 inquiries or refusing that cash, and the third
6 being differing levels of risk tolerance, and
7 then here we also look at the issue of whether a
8 risk-based approach to AML can include
9 prescriptive components.

10 Turning first to wealthy patrons and
11 gambling losses and whether that negates
12 potential money laundering. The evidence
13 adduced before the commission showed that in an
14 early time frame, 2009 to 2011 time period,
15 GPEB's investigations division was concerned
16 about large cash transactions comprising largely
17 of \$20 bills being the proceeds of crime and the
18 increasing frequency and amounts of these large
19 cash buy-ins were in their view indicative of
20 money laundering. At least some of BCLC's
21 representatives held a differing view, a view
22 that many of these large cash transaction
23 patrons had sufficient wealth to support their
24 buy-ins, that there was a cultural preference
25 for cash and that the loss of funds negated the

1 prospect that this was money laundering or that
2 these were proceeds of crime. And of course
3 there's as you saw, Mr. Commissioner, extensive
4 correspondence between the two organizations
5 outlining these different views, and a summary
6 of that is provided in our written submissions
7 at paragraphs 56 through 67.

8 This was also a point that Mr. Kroeker
9 noted in his 2011 report, mainly that the view
10 held by BCLC at the time that losses on the part
11 of a patron precluded the possibility of money
12 laundering were not consistent with the then
13 prevailing view of the law enforcement and
14 regulatory authorities.

15 Leaving aside the differing view on this
16 point, we pause here to note that GPEB and BCLC
17 were united here in their efforts to design and
18 implement cash alternatives in the years
19 following Mr. Kroeker's report and that over
20 those years significant improvements were made
21 with respect to cash alternatives, including in
22 particular with respect to the PGF accounts, but
23 unfortunately cash alternatives alone were not
24 sufficient to stem the flow of large and
25 suspicious cash transactions and GPEB

1 investigators continued to observe and note an
2 exponential rise in the value of those
3 suspicious cash transactions

4 This brings me to the second point I made
5 earlier. One of the other issues where there
6 were differing views was on what the level of
7 proof of criminality was required prior to
8 refusing suspicious cash. And indeed I think
9 it's fair to say that BCLC and GPEB's views on
10 this issue were not always aligned and shifted
11 and evolved as one would expect over the course
12 of the years we looked at in the inquiry leading
13 up to summer of 2015 and Dr. German's work and
14 now of course the work of this commission.

15 And I say here it's not in dispute that
16 neither GPEB or BCLC could definitively prove
17 that any particular lot of suspicious cash that
18 was brought into a gaming facility was illicit
19 or was the proceeds of crime. But the
20 difference in views appears to have been whether
21 that proof was necessary before the cash could
22 be refused. The evidence suggests that BCLC
23 initially -- and here I'm referring to the 2010
24 to 2015 time frame -- had a higher standard of
25 proof required before refusing suspicious cash.

1 As Mr. Towns testified, absent proof the cash
2 was coming from organized crime, BCLC was to
3 continue to accept the cash, observe and report.

4 Nonetheless, by mid 2015 patrons were being
5 placed on sourced-cash conditions because they
6 were known to have received cash from Mr. Jin,
7 absent proof that the funds were in fact illicit
8 and based on potential linkages between large
9 cash buy-ins and illicit funds, organized crime.
10 And so this then evolved further through to
11 December 2017 when Dr. German makes his interim
12 recommendation that's implemented then in
13 January of 2018 requiring source of funds for
14 all cash transactions over \$10,000 regardless of
15 whether there are indicators or suspicion or
16 not. And that effectively renders the issue of
17 what level of proof is required moot. We have
18 now a prescriptive monetary level for source of
19 cash, source of funds requirement that removes
20 the issue that had arisen over the proceeding
21 years that caused, notably, some tension between
22 the parties as to the level of proof that was
23 required.

24 This then brings us to the third issue here
25 which was differing levels of risk tolerance.

1 And, Mr. Commissioner, you heard extensive
2 evidence over the course of this inquiry about
3 what constitutes a risk-based approach
4 anti-money laundering initiatives and the role
5 or potentially lack thereof that prescriptive
6 measures play within a risk-based framework.
7 And as a starting point we say here it's
8 important to bear in mind that there's no one
9 universally accepted methodology for a
10 risk-based approach. By its nature it's
11 intended to be flexible and adaptable to the
12 specific risk and vulnerabilities faced by a
13 given organization.

14 Importantly, a risk-based approach, the
15 provinces can and should include a prescriptive
16 components, and indeed Mr. Desmarais agreed with
17 this proposition in his evidence and that
18 proposition is supported by the Financial Action
19 Task Force, FATF, guidance document and we
20 address these issues -- I should pause to note,
21 Mr. Commissioner, in more detail in our reply
22 submission in paragraphs 4 and 5 and 7.

23 The key point the province makes with
24 respect to the issue of the risk-based approach
25 is that, as I just said, adopting a risk-based

1 framework does not preclude utilizing
2 prescriptive components. For example, a
3 universal monetary threshold for acquiring
4 source of funds as we now have within a
5 risk-based framework.

6 Moving to my next point, Mr. Commissioner.
7 The need to understand the nature and the scope
8 of money laundering in BC gaming facilities in
9 order to effectively address that issue is also
10 illustrated by the evolution of the cash
11 conditions program, BCLC's cash conditions
12 program, over the course of time and indeed
13 there are -- you heard different evidence about
14 when and how that program had its genesis and
15 initially came to be. But it seems to be common
16 ground that by -- the first patron was placed on
17 cash conditions in about November of 2014, and a
18 small number of targeted patrons were put on
19 those conditions in the spring and summer of
20 2015 and then that program was significantly
21 expanded in the fall of 2015 onwards after the
22 E-Pirate and the GPEB spreadsheet.

23 But in any event, GPEB agrees with BCLC
24 that its cash conditions program was a
25 worthwhile tool to reduce the proceeds of crime

1 in BC casinos and was particularly effective
2 once it was applied to significant number of
3 patrons. And so going into a little bit more
4 detail here, as Mr. Sweeney explained, the
5 program in its initial onset applied to a very
6 limited number of targeted patrons. But as I
7 said, following E-Pirate and GPEB's spreadsheet
8 it evolved into becoming a form of a directed
9 source of funds policy that targeted high-risk
10 players, including those known to be receiving
11 funds from cash facilitators.

12 But it's not accurate in GPEB's submission
13 to suggest that that cash conditions program
14 applied to all patrons. Which is a suggestion
15 made in BCLC's reply submissions. The evidence
16 tendered in support of that is that of
17 Mr. Kroeker where he testified that when BCLC
18 receives credible information regarding a patron
19 or a particular source of funds that BCLC deemed
20 to be high risk, then BCLC will immediately act
21 on that information, including placing
22 conditions on play. In the province's
23 submission, that evidence is consistent with a
24 targeted use of source of funds, not a policy of
25 general application that was applied to all

1 patrons. Namely it's not a policy that works or
2 applies or has the breadth or scope of
3 application as what we now have in place in
4 terms of the source of funds requirement for all
5 cash \$10,000 or over that derived from
6 Dr. German's interim recommendation.

7 And we say here that as became evident
8 following implementation of Dr. German's source
9 of funds recommendation, utilizing a
10 prescriptive threshold within an otherwise
11 risk-based framework had the effect of removing
12 the subjective component of when to require
13 source of funds from the equation, and that we
14 say proved to be effective and efficient means
15 of moving forward and it's an illustration of
16 how prescriptive measures can be valuable
17 components within a risk-based framework when
18 used in conjunction with more subjective
19 measures.

20 This brings me, Mr. Commissioner, to the
21 third theme I identified earlier, and here we
22 highlight some of the evidence around the need
23 to learn from past experiences and the
24 importance of being flexible and willing to
25 adapt. And here we say that all stakeholders in

1 the gaming sector, but of course across other
2 sectors that are in issue in this commission as
3 well, need to look at the past and learn from
4 past experiences, both the good ones and the bad
5 ones, and be adaptable and flexible. This
6 includes not being overly wedded to any
7 particular view and being willing to adapt based
8 on the shifting nature of criminality and the
9 risk profiles that are being encountered in the
10 various sectors.

11 And the evidence you heard,
12 Mr. Commissioner, suggests that at times
13 organizational conflict resulted in entrenched
14 or what could be perceived as adversarial
15 positions. The 2011 to 2014 time frame was a
16 difficult one in the relationship between BCLC
17 and GPEB. And indeed in 2014 GPEB subsequently
18 underwent an internal Ministry of Finance
19 review. That was in October 2014. And then was
20 restructured in December 2014.

21 And the evidence shows that the change in
22 leadership within GPEB that resulted from this
23 internal review improved the dynamics both
24 internally and also in terms of GPEB's
25 relationship with BCLC. Indeed one of the first

1 steps towards that improved relationship was the
2 Exploring Common Ground workshop that
3 Mr. Meilleur arranged in June of 2015. And by
4 the summer of 2015 the evidence shows that GPEB
5 and BCLC were *ad idem*, that there was a
6 significant issue with large amounts of
7 suspicious cash, that this cash was likely
8 proceeds of crime being used to buy in at BC
9 gaming facilities. And of course that common
10 ground or reaching that common ground derived
11 principally from two key events. The first was
12 from BCLC and GPEB learning -- and this was in
13 July of 2015 -- that the RCMP had opened an
14 investigation into suspected organized crime
15 links to cash drop-offs at BC casinos -- that's
16 E-Pirate -- and then the creation and
17 distribution in August of 2015 of the
18 spreadsheet that GPEB's investigators compiled
19 looking at the large and suspicious cash
20 transactions at River Rock.

21 BCLC and GPEB were also *ad idem* that
22 further actions needed to be taken. But here
23 there were differing views on what actions were
24 required. And this time period and the various
25 views and the steps that were being considered

1 are set out in more detail, Mr. Commissioner, in
2 paragraphs 137 through 156 of the province's
3 closing submission. And this is the
4 correspondence between Mr. Mazure, Mr. Lightbody
5 in the October 2015 ministerial directive, and
6 we say it's clear from the evidence and the
7 submissions that there's not one common
8 interpretation of those events. Particularly as
9 to whether -- what direction was being made with
10 respect to source of funds and whether that was
11 in fact requiring BCLC to implement a general
12 source of funds policy. The province obviously
13 says the direction was clear. Other
14 stakeholders have different views. But
15 regardless, the evidence shows at least from
16 GPEB's perspective more was needed in terms of
17 source of funds, and this is separate and apart
18 from source of wealth. But more was needed in
19 terms of steps being taken to address source of
20 funds in making those inquiries for suspicious
21 cash.

22 And here, Mr. Commissioner, I pause just to
23 correct a typo in the province's written
24 submission. In paragraph 166 footnote 389, the
25 reference should be to paragraphs 136 and 137 of

1 exhibit 587, not to paragraph 141.

2 Now, in the fall of 2015 GPEB engaged
3 Meyers Norris Penny, MNP, to work with it and to
4 analyze current practices with respect to source
5 of funds, primarily but also source of wealth,
6 handling of cash, use of cash alternatives, and
7 overall customer due diligence in gaming
8 facilities. The MNP report was issued in July
9 of 2016 and with some exceptions and despite
10 some initial issues, including a concern
11 expressed by Mr. Kroeker about data collection
12 and accuracy, BCLC and GPEB worked
13 collaboratively on implementing the MNP report
14 recommendations. GPEB acknowledges that one of
15 MNP's recommendations was for GPEB to consider
16 implementing a requirement that service
17 providers refuse unsourced cash deposits that
18 exceeded an established dollar amount. That was
19 recommendation 4.2. But it's not accurate to
20 suggest that GPEB did not take any steps to try
21 and have that policy or a policy similar to that
22 put into place. First, efforts were already
23 underway towards the objective of implementing
24 more prescriptive source of funds requirements
25 in the summer and the fall. And we see that in

1 the summer and fall of 2015 correspondence
2 between Mr. Mazure, Mr. Lightbody and the
3 minister of October 2015 direction. GPEB also
4 attempted to move forward to pursue the
5 recommendations set out by MNP in 4.2, but among
6 other things was faced with BCLC raising
7 concerns about the prescriptive nature of that
8 policy creating conflict issues between federal
9 and provincial requirements and causing
10 confusion for service provider staff. And the
11 potential for such a policy to have dramatic
12 adverse fiscal impacts on service providers,
13 which BCLC suggested if this occurred could
14 result in service providers interpreting GPEB's
15 conduct as frustrating their contracts with BCLC
16 and then in turn looking to government for
17 compensation. And the reference for those
18 concerns, Mr. Commissioner, is found on page 1
19 of exhibit 711.

20 I turn now, Mr. Commissioner, to deal with
21 the transition to the new administration in the
22 summer of 2017 and the briefings that followed.
23 And on balance the evidence suggests that,
24 fairly put, both BCLC and GPEB's briefings
25 likely left something to be desired from the

1 other's perspective. The important point here,
2 we say, is not which briefing was more or less
3 accurate. The important point is what the
4 minister took from those briefings, mainly that
5 each of GPEB and BCLC had their own perspectives
6 and that those perspectives differed
7 significantly. And we deal with this in our
8 reply submission at paragraph 52 and following.

9 The fact of the matter is that the minister
10 did not exceed to either BCLC's or GPEB's views
11 in whole but instead recognized that there was a
12 gap that existed between them and the resulting
13 need to seek external advice. This of course
14 resulted in Dr. German being retained and him
15 making both interim and final recommendations.
16 And with respect to Dr. German's work, the
17 important point is not whether GPEB or any
18 stakeholders agree with all of his findings or
19 recommendations; the key point is the benefit
20 that derived from having a different
21 perspective, one that was independent of BCLC
22 and GPEB's views, both of which had been
23 indelibly influenced by historical events at
24 that point, and having that independent
25 perspective brought to bear on the issues at

1 hand and to provide a recommendation for the way
2 forward, including importantly, we say, that
3 December 2017 interim recommendation for the
4 \$10,000 source of funds threshold.

5 And I pause here to note that the same will
6 apply to this commission's work. The divergent
7 views on the nature and extent of money
8 laundering in gaming facilities that came to
9 bear through the evidence adduced over the
10 course of this inquiry will inform this
11 commission's work and its recommendations. And
12 that is where there's real value in having an
13 independent review and independent
14 recommendations being made for all stakeholders
15 and to guide the way forward.

16 And this brings me to the fourth and final
17 theme I wish to address today, and that is that
18 an effective AML response is one that is
19 grounded in a collaborative approach that
20 maximizes information sharing opportunities, and
21 the province has taken steps to foster a more
22 collaborative approach between all stakeholders
23 in the gaming sector, principally of course
24 itself, GPEB, BCLC and law enforcement.

25 And these steps and the initiatives that are

1 being undertaken are set out, Mr. Commissioner,
2 in our closing submission starting in around
3 paragraphs 167 and following. First in April of
4 2016 the province established JIGIT, which
5 operates under the auspices of CFSEU, the
6 Combined Forces Special Enforcement Unit of BC.
7 And as I mentioned earlier, JIGIT has a clearly
8 defined mandate and that includes addressing one
9 of the issues that was not necessarily clear in
10 the IIGET's mandate, which was illegal
11 activities occurring inside BC casinos.

12 JIGIT's strategic objectives includes
13 specifically targeting and disrupting organized
14 crime and gang involvement in, among other
15 things, preventing criminal attempts to legalize
16 proceeds of crime through gaming facilities.
17 It's a clear and specific mandate. There are
18 currently eight members of GPEB embedded within
19 JIGIT and it liaises of course with BCLC.

20 One of JIGIT's early initiatives was Project
21 Athena, which is now known as the Counter
22 Illicit Finance Alliance of BC, CIFA-BC, and
23 this began as a probe of course into the use of
24 bank drafts at Lower Mainland casinos and
25 uncovered a money laundering vulnerability

1 resulting from the lack of standardization of
2 the content required on a bank draft. And I
3 pause here to note as well one of the key
4 benefits with CIFA-BC is of course that it
5 operates in somewhat of a public/private type
6 partnership in that it includes representation
7 from financial institutions.

8 Next in early 2018 the Gaming Integrity
9 Group was established, the collaborative network
10 to discuss issues as they arise in the AML
11 environment. It includes representatives from
12 BC's AML group, GPEB Enforcement Division and
13 JIGIT and it provides an opportunity for
14 frontline investigators to discuss individual
15 incidents relating to money laundering in BC.

16 In February of 2019 the AML Vulnerabilities
17 Working Group was formed as the joint chief head
18 working group. It's policy focused and it
19 includes GPEB representatives from JIGIT and
20 from GPEB's other divisions, including strategic
21 policy and projects, compliance, enforcement and
22 others. And the key function here is to
23 identify money laundering vulnerabilities and
24 bring those to the group for consideration. So
25 to make sure that GPEB has the united approach

1 to these issues on its own internal basis.

2 And then in July of 2019 GPEB also
3 formalized a collaborative intelligence model
4 called the Gaming Intelligence Investigation
5 Unit and that's a 12-person team comprised of
6 RCMP and GPEB personnel and its run through
7 JIGIT.

8 GPEB and BCLC have an effective and a
9 collaborative relationship now. As GPEB's
10 current GM Sam MacLeod testified, GPEB currently
11 has good leadership and is functioning well and
12 Mr. McLeod noted that he had not experienced any
13 difficulties dealing with BCLC in his role as GM
14 and he characterized their relationship between
15 the two entities as excellent.

16 And on this point, on this point I also
17 pause to note now one of the focuses of GPEB's
18 enforcement division is to establish effective
19 information sharing protocols with JIGIT and
20 with BCLC and law enforcement more generally.
21 GPEB has also in this regard invested
22 significantly in further training for its staff
23 both internal and external, and details of that
24 are set out in paragraphs 200 through 204 of the
25 province's written submission.

1 And finally we note the province has done
2 significant work to address the recommendations
3 from Dr. German's "Dirty Money Report." 38 out
4 of 48 recommendations have been addressed and
5 GPEB expects to address additional
6 recommendations through impending legislative
7 amendments to the *Gaming Control Act*. And one
8 of those amendments, an important one we say, is
9 the amendment to include -- to create an
10 independent gaming regulator, the independent
11 gaming control office and two key differences
12 that are expected in that respect from the
13 current state of affairs is that the head of the
14 regulator will be a government in counsel
15 appointment, not a ministerial appointment and
16 will not be part of the ministry executive, and
17 this moves the regulatory function away from the
18 entity responsible for policy and revenue
19 decisions.

20 In conclusion then, Mr. Commissioner, the
21 province says that the steps taken by BCLC and
22 GPEB since the summer of 2015 have been
23 effective in reducing the amount of suspicious
24 cash entering BC casinos, most importantly, the
25 substantial increase in the number of patrons

1 put on sourced-cash conditions by BCLC from
2 September 2015 onwards and the implementation of
3 Dr. German's interim recommendation regarding
4 the general source of funds policy of \$10,000 or
5 over in January 2018. GPEB and BCLC are working
6 well together to better understand and address
7 the remaining money laundering vulnerabilities
8 in the gaming sector. With the benefit of
9 hindsight of course all stakeholders could have
10 done things differently, but the important point
11 is they are now aligned in their willingness to
12 work collaboratively to address and combat money
13 laundering. In summary then, though
14 participants' views of historical views diverge
15 in certain respect, the key point is that the
16 industry -- and this is GPEB, BCLC, service
17 providers to the extent law enforcement is now
18 also involved, they are working together to
19 address both known money laundering
20 vulnerabilities and new and emerging risks.
21 Recent initiatives, including JIGIT, CIFA-BC and
22 GIIU, are demonstrative of this shared
23 commitment to addressing money laundering, and
24 like the initiatives that Ms. Rajotte
25 highlighted in the non-gaming sector, this

1 signals a brighter future for the province in
2 terms of addressing AML issues.

3 I note finally, Mr. Commissioner, the
4 province is most appreciative of the
5 commission's extensive work to date over the
6 course of this inquiry and of course the work
7 still to come and looks forward to the
8 Commissioner's findings and recommendations. I
9 note as well finally, Mr. Commissioner, the
10 province has been allocated a time for reply,
11 and we do reserve that time for a reply at the
12 end of the submissions.

13 THE COMMISSIONER: All right. Thank you very much,
14 Ms. Hughes. And we'll now turn back to
15 Mr. McGowan to let us know who's next. Thank
16 you.

17 MR. MCGOWAN: Counsel for Canada will address you
18 next, Mr. Commissioner.

19 THE COMMISSIONER: Thank you.

20 MX. WRAY: Thank you, Mr. Commissioner. It's BJ Wray
21 for the Attorney General of Canada.

22 THE COMMISSIONER: Thank you, Mx. Wray.

23 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**

24 **CANADA BY MX. WRAY:**

25 Shortly after Premier Horgan announced the

1 establishment of this commission of inquiry into
2 money laundering in May of 2019, the federal
3 Minister of Public Safety, Bill Blair, expressed
4 Canada's commitment to fully cooperating in this
5 inquiry. Minister Blair noted that money
6 laundering is not a victimless crime. Rather
7 it's a crime that affects all Canadians. The
8 federal government has long recognized the
9 importance of the issues that this commission is
10 tasked with examining.

11 Federal studies have described this
12 symbiotic relationship between money laundering
13 and some of society's most destructive criminal
14 activities such as human smuggling, corruption,
15 fraud and the trafficking of illicit drugs.
16 Taking steps to deter money laundering requires
17 a coordinated national and international
18 response because money laundering, as the
19 Commissioner has heard, is a highly complex and
20 ever evolving problem.

21 Canada's very grateful to have been
22 involved in this commission's rigorous
23 examination of this problem. Soon after Premier
24 Horgan's announcement, Canada sought and was
25 granted full participant status in this inquiry.

1 Canada's grant of standing extends to each of
2 the sectors that this commission has been tasked
3 with examining. This broad grant of standing
4 has meant that numerous federal government
5 departments and agencies have participated in
6 the commission in various ways. These federal
7 entities include the RCMP; the Department of
8 Finance; the Financial Transactions and Reports
9 Analysis Centre of Canada, of course better
10 known as FINTRAC; Public Safety Canada; Canada
11 Border Services Agency; the Canada Revenue
12 Agency; the Public Prosecution Service of
13 Canada; the Office of the Superintendent of
14 Financial Institutions, known as OSFI; Public
15 Services and Procurement Canada; Statistics
16 Canada; the International Assistance Group at
17 the Department of Justice and the Canada
18 Mortgage and Housing Corporation. As that
19 lengthy list indicates, the federal anti-money
20 laundering regime is composed of and relies upon
21 a wide spectrum of federal entities who are all
22 united in their effort to combat money
23 laundering in Canada.

24 Canada's written opening and closing
25 submissions set out in detail the federal

1 anti-money laundering regime and I will not
2 repeat those submissions here this morning.
3 I'll note, however, that the federal regime
4 consists of 13 primary partners and that the
5 expertise of other departments and agencies is
6 drawn on as relevant and appropriate.

7 Canada has sought to provide the commission
8 with factual information about the federal
9 regime, including the mandates, roles and
10 responsibilities of the various federal entities
11 who comprise that regime. Canada has provided
12 this information to the commission in a variety
13 of ways, including through the production of
14 relevant federal documents, many of which of
15 course have been marked as commission exhibits,
16 and Canada has also provided information about
17 the regime through the presentations and
18 interviews that were given to commission counsel
19 by over 50 federal officials. Many of these
20 officials were asked by commission counsel to
21 appear as witnesses during the commission
22 hearings, and ultimately the Commissioner
23 received viva voce testimony from over
24 30 federal witnesses on various sectors that the
25 commission is examining.

1 Canada has also assisted by producing
2 several affidavits from federal officials and by
3 generating original statistical reports at the
4 request of commission counsel. Canada also
5 prepared an original report on law enforcement
6 resourcing of money laundering investigations --
7 that's been marked as exhibit 821 -- in order to
8 assist the Commissioner in understanding the
9 complexities of these investigations as well as
10 the amount and types of resources necessary for
11 them.

12 As the Commissioner is aware, the primary
13 federal legislation with respect to money
14 laundering is the *Proceeds of Crime (Money*
15 *Laundering) and Terrorist Financing Act*, better
16 known as the *PCMLTFA*. This act establishes
17 Canada's AML framework, including FINTRAC, and
18 the act sets out the requirements for reporting
19 entities, including client identification,
20 record keeping, compliance programs and the
21 mandatory reporting of certain types of
22 transactions.

23 There are over 24,000 reporting entities in
24 Canada and the commission has heard testimony
25 from many witnesses about their reporting

1 obligations under the act, especially with
2 respect to the filing of Suspicious Transaction
3 Reports. Over the last decade, for example, the
4 number of reports submitted to FINTRAC has been
5 significantly increasing. In 2019, 2020,
6 FINTRAC received 386,102 Suspicious Transaction
7 Reports. That represents a 558 percent increase
8 over the number of Suspicious Transaction
9 Reports received in the year 2010, 2011. The
10 *Proceeds of Crime Act* also authorizes FINTRAC to
11 analyze financial transaction reports and to
12 disclose designated information to law
13 enforcement, to intelligence agencies and to
14 other disclosure recipients. The commission has
15 heard from FINTRAC representatives and law
16 enforcement witnesses with respect to these
17 disclosure packages and with respect to how they
18 are used in the investigation of money
19 laundering.

20 In 2019, 2020, FINTRAC provided 2,057
21 unique disclosure packages, which represents an
22 increase of 124 percent over the year 2012,
23 2013. What these numbers illustrate is the
24 ongoing importance of maintaining a robust
25 anti-money laundering regime. Over the years,

1 the federal regime has adapted and evolved in
2 order to address new and emerging money
3 laundering and terrorist financing threats.

4 Canada's oral submissions today will
5 highlight some of the key evidence heard by the
6 commission in respect of Canada's anti-money
7 laundering activities, as well as some of the
8 key initiatives that are being undertaken by the
9 federal government. As you've just heard from
10 my friends with the Attorney General of British
11 Columbia, many of these initiatives are taking
12 place in collaboration with the Province of
13 British Columbia and with other provincial and
14 territorial counterparts.

15 Canada most certainly agrees with the
16 province's submissions this morning on the
17 absolute necessity of a coordinated and
18 collaborative approach to the issue of money
19 laundering. Our submissions this morning are
20 organized according to the sectors that the
21 commission is examining and to which Canada
22 contributed relevant evidence. We'll begin with
23 the law enforcement sector. We'll then turn to
24 federal evidence on virtual assets, trade-based
25 money laundering, real estate, professionals,

1 including lawyers and accountants, and finally
2 federal evidence in relation to financial
3 institutions in the corporate sector. Our
4 submissions in chief will conclude with a brief
5 overview of the newly released followup report
6 from the Financial Action Task Force. This new
7 report outlines the improvements that Canada has
8 made to its anti-money laundering regime over
9 the past five years.

10 Canada's submissions today will be
11 presented by the counsel team who have
12 represented Canada during this commission
13 process. The order of speakers will be Olivia
14 French, Dorian Simonneaux, Ashley Gardner and
15 Katherine Shelley and then I will offer
16 concluding remarks on the new Financial Action
17 Task Force report.

18 However, before I turn the submissions over
19 to Ms. French, I would like to take up the
20 Commissioner's invitation to address the issue
21 of the constitutional jurisdictional limits of
22 this provincial commission of inquiry. In his
23 interim report the Commissioner invited
24 participants to address the jurisdictional issue
25 in their closing submissions. Canada has done

1 so at annex A of our written closing submissions
2 and I just want to provide a few brief
3 submissions on this issue today. I'll begin by
4 emphasizing that Canada's participation in this
5 inquiry has been based on a mutual interest in
6 working collaboratively with the Province of
7 British Columbia and other participants to
8 investigate and further understand the issue of
9 money laundering.

10 While Canada has voluntarily participated
11 in every aspect of the commission's process it's
12 also important to acknowledge that Canada's
13 participation has necessarily been guided by the
14 inherent constitutional limitations of
15 provincial commissions of inquiry. These
16 limitations are grounded in the division of
17 powers between the federal and provincial
18 governments. More particularly, the Supreme
19 Court of Canada's jurisprudence on the
20 constitutional doctrine of interjurisdictional
21 immunity sets out some limits on the powers of
22 provincial commissions. It's well established
23 in the case law that a provincial commission
24 cannot make findings or recommendations with
25 respect to the administration or management of a

1 federal entity. And the Commissioner has
2 expressly acknowledged this limitation in his
3 interim report at pages 6 to 7. And he invited
4 the participants to flesh out the precise scope
5 of this principle.

6 Well, I think it's important to acknowledge
7 that that is not an easy task. It is very
8 difficult to state what the precise scope of the
9 principle may be outside of a particular set of
10 facts. Madam Justice Saunders noted as much in
11 the Braidwood appeal case, which I will discuss
12 a little bit in a moment. She said that the
13 jurisprudence on the limits of a commission's
14 scope of inquiry into federal issues cannot be
15 simply stated. The analysis must be grounded in
16 the substance of what the commission does or
17 proposes to do with respect to federal issues.
18 So my submissions should not be taken as the
19 definitive answer to the commission's invitation
20 to flesh out the precise scope of this
21 principle. But with that caveat in mind,
22 Canada's overarching position on how the
23 principle of interjurisdictional applies to the
24 present commission is that the Commissioner's
25 final report should not include subjective

1 assessments of the federal regime or federal
2 institutions because such assessments would
3 necessarily implicate the internal management
4 and administration of a federal regime.

5 For example, findings with respect to the
6 efficacy of federal institutions such as FINTRAC
7 or the RCMP would entail making judgments about
8 the internal management and administration of
9 those institutions and would in our view go
10 beyond what the Supreme Court has determined is
11 permissible.

12 In our view, the internal management and
13 administration of entities, federal entities,
14 includes activities such as the following: the
15 prioritization process for anti-money laundering
16 enforcement initiatives, investigative methods
17 and investigative procedures, the creation and
18 application of money laundering policies, money
19 laundering directives or regulations or
20 legislation, and decisions related to the
21 resourcing of anti-money laundering initiatives.
22 These are some of the examples that we say the
23 Commissioner ought not to provide subjective
24 opinions on.

25 Statements contained within the

1 Commissioner's final report regarding the
2 federal regime and its institutions should be
3 limited to findings of fact because those
4 findings of fact are necessary to advise the
5 provincial government regarding money laundering
6 activities in the province both past and present
7 and to provide recommendations to the province
8 for future activities.

9 Indeed Canada's participation in the
10 commission has been aimed at ensuring that the
11 Commissioner has the necessary factual
12 information about the federal regime and its
13 activities in order to inform the Commissioner's
14 recommendation to the government of British
15 Columbia.

16 As I mentioned, the Braidwood appeal case
17 may be of some assistance in understanding the
18 scope of interjurisdictional immunity in
19 relation to a provincial commission. In 2009
20 the British Columbia court of appeal discussed
21 the jurisdictional limits in the context of
22 notices of misconduct that had been issued to
23 four RCMP officers in the provincial inquiry
24 into the death of Robert Dziekanski at the
25 Vancouver International Airport.

1 Mr. Commissioner, for your reference, the
2 decision is 2009, BCCA 6704.

3 The officers argued before the court of
4 appeal that in issuing the notices of
5 misconduct, Commissioner Braidwood exceeded his
6 jurisdiction both with respect to the federal
7 criminal law power and the federal power over
8 the management and administration of the RCMP.

9 Now, the court of appeal rejected both of
10 those arguments, but in rejecting those
11 arguments the court affirmed the jurisdictional
12 limits that Canada has set out in our written
13 closing submissions at annex A. The court noted
14 that Commissioner Braidwood could comment in his
15 final report if it was warranted on the response
16 of the individual officers themselves to the
17 events surrounding Mr. Dziekanski's death
18 because that would advance the public confidence
19 in the administration of justice, which is
20 squarely within provincial jurisdiction.

21 Importantly, though, the court also noted
22 that Commissioner Braidwood in his original
23 ruling on the validity of the notices of
24 misconduct indicated that he was well aware of
25 the constitutional limits that governed the

1 commission and that he would keep within those
2 limits in writing his final report. Indeed
3 Commissioner Braidwood expressly stated in his
4 original ruling that he did not have the
5 jurisdiction to inquire into such things as the
6 methods of investigation used by the RCMP
7 because those were internal administrative
8 decisions. His inquiry with respect to the four
9 officers was specifically limited to the facts
10 surrounding the event. His stated aim was to
11 examine what the officers did and what the
12 officers said on the night of Mr. Dziekanski's
13 death. And that's cited at paragraph 48 of the
14 court of appeal's decision.

15 In coming to its conclusion with respect to
16 the constitutionality of the notices of
17 misconduct, the court of appeal also relied on
18 the Supreme Court's decision in the *Keable* case,
19 and of course we too rely on that case in our
20 written submissions.

21 In *Keable* the court said that a provincial
22 commission of inquiry could not use the valid
23 constitutional power that it has to inquire into
24 the administration of justice as a means of
25 inquiring into the rules, policies and

1 procedures that govern the members of the RCMP,
2 nor could it inquire into the operations,
3 policies and management of the RCMP, nor could
4 it make recommendations regarding those issues.

5 In our view, the Supreme Court's guidance
6 means that the Commissioner may set out, for
7 example, factual information about the RCMP's
8 engagement in anti-money laundering activities
9 in the province, such as who knew what, when,
10 how and what they did with that information.
11 But the Commissioner may not pass judgment on
12 the internal prioritization of investigations or
13 the commitment of resources or on any other
14 internal administrative and management decision
15 of a federal entity. But just to be clear, the
16 Commissioner is most certainly not precluded
17 from making factual findings about federal
18 entities and the regime under which they
19 operate. These are absolutely necessary in
20 order to explain what happened during the
21 relevant time periods that are under
22 consideration by the Commissioner.

23 This commission has a very important role
24 to play in elucidating the extent, the growth,
25 evolution and methods of money laundering in

1 British Columbia in the many different sectors
2 that its been examining. We hope that Canada's
3 participation throughout this inquiry will
4 ultimately serve to assist the Commissioner in
5 setting out this full factual context and we
6 look forward to learning from the Commissioner's
7 final report and to continue to work
8 cooperatively with the government of British
9 Columbia, provincial regulators and
10 international partners in order to improve
11 Canada's anti-money laundering regime.

12 I'll now turn over Canada's submissions to
13 my colleague, Olivia French, who will begin or
14 submissions on the law enforcement sector

15 THE COMMISSIONER: Thank you, Mx. Wray.

16 And Ms. French.

17 MS. FRENCH: Yes, thank you, Mr. Commissioner. Can
18 you hear me all right?

19 THE COMMISSIONER: Yes, I can. Thank you.

20 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**
21 **CANADA BY MS. FRENCH:**

22 Thank you. I will begin Canada's
23 substantive factual submissions by providing a
24 brief overview of the structure of federal
25 policing in BC. I will speak to some of the

1 RCMP's past engagement with money laundering in
2 the province before we turn to some of the
3 current federal initiatives addressing money
4 laundering in BC.

5 The provincial police service agreement
6 makes the RCMP the provincial police service in
7 BC except for in those municipalities that have
8 established their own police department. So the
9 federal RCMP is responsible for provincial
10 policing infrastructure. However, both the
11 federal and provincial governments oversee and
12 direct police services in British Columbia.
13 "E" Division is the division of the federal RCMP
14 servicing British Columbia. It provides members
15 to municipal, provincial and federal policing
16 teams and to specialized teams. Integrated
17 units like CFSEU-BC draw on officers and
18 civilian members from "E" Division and from
19 specialized units and municipal detachments
20 across the province. Integrated units like
21 CFSEU-BC are usually board governed. In the
22 case of CFSEU-BC it is governed by the joint
23 CFSEU-BC and Organized Crime Agency of BC Board
24 of Governance. And this board is comprised of
25 federal RCMP, provincial and municipal law

1 enforcement representatives.

2 Policing in BC has long had a money
3 laundering or perhaps more broadly a financial
4 crime component and focus. Since the early
5 2000s numerous law enforcement detachments and
6 teams have worked on money laundering and
7 financial fraud in BC. These include the
8 Integrated Illegal Gaming Enforcement Team, the
9 Richmond RCMP, CFSEU-BC and "E" Division's IPOC
10 and FSOC teams; that's the Integrated Proceeds
11 of Crime team and the federal Serious Organized
12 Crime Team. The RCMP has also collaborated with
13 and supported Canada's international anti-money
14 laundering partners.

15 So when considering law enforcement's
16 anti-money laundering activities in the period
17 being examined by this commission, it is
18 important to understand what other significant
19 activities law enforcement was dealing with.
20 For example, in the early 2000s, there was a
21 substantial influx of transnational organized
22 crime in BC, and this coincided with and
23 amplified issues the province was already facing
24 with illicit drugs, especially fentanyl and gang
25 violence. Policing in BC was also planning for

1 and mobilizing resources to support the 2010
2 Winter Olympics along with addressing all of the
3 usual threats to public safety such as crime and
4 wildfires. In addition to the other factors
5 impacting law enforcement, there is also the
6 added complexity of the offence of laundering
7 the proceeds of crime itself.

8 Mr. Commissioner, you have heard evidence
9 from many witnesses with respect to the
10 complexities of money laundering investigations.
11 As Staff Sergeant Hussey testified, this is in
12 part because cash itself, unlike say certain
13 firearms or illicit drugs, is not itself illegal
14 to possess or exchange. No matter how
15 suspicious the cash is, the criminal offence of
16 laundering the proceeds of crime requires that
17 the cash be directly linked to the underlying
18 illegal activity. And in order to establish
19 that link, law enforcement has to work backwards
20 from the suspicious cash to piece together a
21 trail which leads to demonstrable evidence of a
22 predicate offence. E-Pirate, which was the
23 investigation run by the federal serious
24 organized crime [indiscernible] that was
25 sufficiently able to demonstrate to the required

1 threshold, a link between suspicious cash
2 entering legal gaming establishments and a
3 predicate offence. The RCMP has shared
4 important information with BCLC and GPEB on this
5 and other key money laundering investigations
6 where it's been authorized and using the
7 appropriate channels of communication.

8 The Commissioner has also heard evidence
9 about the vast law enforcement resources that
10 are required to conduct a money laundering
11 investigation and it is commonly acknowledged
12 that policing resources are finite and that law
13 enforcement always faces competing priorities.
14 Past and present law enforcement witnesses
15 testified that there will always be tough
16 decisions to make based on available resources
17 and the scope of each unit's mandate. And
18 furthermore, some of these decisions may be
19 outside of the control of the federal RCMP, such
20 as the province's disbandment of IIGET or the
21 decision by the City of Richmond in 2006 not to
22 fund additional officers to address casino-based
23 crime.

24 The Commissioner has heard from some
25 witnesses that conviction rates for money

1 laundering offences should be used as a measure
2 of whether Canada's anti-money laundering regime
3 is effective. Now, aside from the
4 constitutional jurisdictional issues that could
5 be raised by a provincial commission of inquiry
6 commenting on the effectiveness of the federal
7 regime, there are also factual reasons to
8 suggest that conviction rates are an
9 inappropriate measure of success.

10 The evidence has demonstrated that
11 individuals charged with money laundering along
12 with other offences will often be convicted on a
13 more serious predicate offence such as drug
14 trafficking or assault. Now, this evidence was
15 provided by the Statistics Canada panel in
16 exhibit 727 and in the money laundering
17 prosecution overview report in exhibit 1015.

18 The money laundering charge may be dropped
19 for any number of reasons, including as part of
20 the plea bargain, or the individual may go on to
21 be convicted by a judge or jury on only some of
22 the charged offences. Therefore conviction
23 rates may not be a reliable measure of the
24 success of an anti-money laundering regime.

25 Similarly, Canada urges the Commissioner to

1 take a cautious approach when comparing the
2 Canadian anti-money laundering regime to the
3 regimes used in other international
4 jurisdictions. The Canadian context is unique,
5 especially with respect to our robust privacy
6 legislation, our constitutional division of
7 powers between the federal and provincial
8 governments and the important role played by the
9 *Charter of Rights and Freedoms* in guaranteeing
10 individuals' rights and freedoms. Any
11 comparative analysis with other jurisdictions
12 must take into account these unique features.

13 Turning now to JIGIT and to current law
14 enforcement approaches to money laundering in
15 BC. The Commissioner had heard from a number of
16 federal witnesses, including Superintendent
17 Taylor and Superintendent Payne that in recent
18 years there has been a concerted effort to
19 strengthen federal expertise and resources in
20 anti-money laundering law enforcement. Through
21 various initiatives, law enforcement is
22 promoting enhanced information sharing within
23 legally permissible bounds and creating
24 partnerships to collaborate more effectively on
25 anti-money laundering efforts. And I will speak

1 to one of the initiatives that the Commissioner
2 has heard evidence on and the province also
3 addressed, the Joint Integrated Gaming
4 Investigation Team earlier.

5 So in April 2016, as the Commissioner has
6 heard, JIGIT was formed under CFSEU-BC. The
7 Commissioner heard testimony from Superintendent
8 Cox and Staff Sergeant Hussey, who discussed
9 JIGIT's role and structure. And as the province
10 submitted earlier, JIGIT is an integrated team
11 made up of RCMP and GPEB members. Furthermore,
12 it is also board governed. The province noted
13 earlier that JIGIT has a clear mandate. That
14 mandate in full is to provide a dedicated
15 coordinated multi-jurisdictional investigative
16 and enforcement response to unlawful activities
17 within BC gaming facilities with an emphasis on
18 AML strategies to illegal gambling in BC and to
19 provide a targeted focus on organized crime. So
20 in essence, JIGIT is the on the ground law
21 enforcement team dedicated to investigating
22 money laundering in BC gaming facilities and
23 illegal gambling.

24 Since its inception JIGIT has conducted
25 numerous investigations, made a number of

1 arrests, seized cash and property and closed
2 illegal gaming operations. JIGIT's search
3 warrants for illegal gaming houses throughout
4 the Lower Mainland in BC have resulted in
5 charges, convictions and disruption of criminal
6 enterprises. In addition, JIGIT has engaged in
7 education and public outreach and has forged
8 partnerships in the province to facilitate
9 information sharing. As you heard earlier from
10 Ms. Hughes about some of these groups and
11 partnerships, you also heard about the shared
12 commitment to information sharing.

13 As mandated, JIGIT was subject to a
14 five-year review, the result of which was to
15 recommend JIGIT's continued operation. The
16 reviewers, including witness Doug LePard,
17 concluded that from 2016 to 2019 JIGIT had
18 substantially achieved its key objectives. The
19 JIGIT review report is exhibit 803 to the
20 commission's proceedings.

21 In addition to JIGIT and under CFSEU-BC,
22 law enforcement also continues to provide the
23 provincial tactical enforcement priority list,
24 the PTEP list, to BCLC to ensure that BCLC can
25 identify individuals who pose a public safety

1 risk.

2 Mr. Simonneaux will now speak to the Federal
3 Serious Organized Crime Unit at "E" Division and
4 discuss virtual assets. Thank you,
5 Mr. Commissioner.

6 THE COMMISSIONER: Thank you, Ms. French.

7 Mr. Simonneaux.

8 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**
9 **CANADA BY MR. SIMONNEAUX:**

10 Thank you, Commissioner. Can you hear me
11 all right?

12 THE COMMISSIONER: Yes, I can. Thank you.

13 MR. SIMONNEAUX: In this first part of my submissions
14 I will focus on the evidence you have heard that
15 relates to RCMP's Federal Serious and Organized
16 Crime group, also known as FSOC. I will
17 summarize what FSOC is, paying particular
18 attention to FSOC's financial integrity program
19 before outlining some of their current
20 initiatives to address money laundering in the
21 province. In the last part of my submissions
22 I'll discuss the topic of virtual assets.

23 FSOC in British Columbia is a large and
24 diverse group of investigators comprising RCMP
25 officers, analysts and support staff located in

1 three regions across the province. It receives
2 support and resources from partner agencies like
3 the VPD, the CRA, forensic accountants at FAMG
4 and investigators with the Office of the
5 Superintendent of Bankruptcy, among others.
6 FSOC's mandate currently focuses on three
7 priorities, transnational organized crime, cyber
8 security and national security. Money
9 laundering and proceeds of crime offences fall
10 within these priorities. FSOC's financial
11 integrity program focuses specifically on
12 financial crimes like money laundering, proceeds
13 and fraud. As Superintendent Taylor, the senior
14 officer in charge of the program, described to
15 you, it is made up of a number of distinct
16 operational groups and includes an Integrated
17 Market Enforcement Team, or IMET, as well as two
18 money laundering teams. It is supported by a
19 dedicated group of specialized intelligence
20 analysts and a small team of officers tasked
21 with making referrals to the BC Civil Forfeiture
22 Office.

23 Now, this commission has heard testimony
24 from 10 past and present members of FSOC
25 Financial Integrity who have occupied a wide

1 variety of roles in the group, including senior
2 officers, unit commanders, team commanders,
3 investigators, civil forfeiture referral
4 specialists and intelligence analysts. FSOC's
5 two money laundering teams have a mandate to
6 detect, enforce and disrupt organized crime
7 groups involved in money laundering operating in
8 BC, nationally and internationally. One team
9 focuses on regional cases with Canadian
10 partners, while the other team targets
11 individuals tied to transnational criminal
12 networks and liaises with international
13 partners. As of March 15th, 2021, these two
14 teams have 18 ongoing investigations between
15 them and are comprised of 40 RCMP officers who
16 focus on money laundering issues within
17 "E" Division.

18 As my colleague Ms. French noted earlier,
19 several federal witnesses have highlighted the
20 RCMP's concerted efforts, to strengthen federal
21 expertise and resources in AML law enforcement.
22 Two of FSOC's most recent initiatives include a
23 February 2020 policing directive as well as the
24 development of Integrated Money Laundering
25 Investigative Teams, or IMLIT. This commission

1 has heard evidence on both of these. This
2 commission heard from Superintendent Taylor that
3 beginning in 2008 RCMP federal policing
4 identified that money laundering and proceeds
5 components should be a part of federal
6 investigations. It also heard from
7 Superintendent Payne that it has been a priority
8 for federal policing to follow the money and to
9 identify, seize and forfeit the major assets and
10 criminal profits of transnational organized
11 crime groups. This led in February of 2020 to a
12 formal directive from the RCMP's Deputy
13 Commissioner that each federal policing serious
14 and organized crime investigation examine
15 whether a proceeds of crime or money laundering
16 charge could be pursued from the very outset of
17 the file.

18 And finally the RCMP's newest initiative,
19 IMLIT, stems from increased funding in budget
20 2019 directed at enhancing federal policing
21 capacity, including to fight money laundering.
22 The new funding allows the RCMP to staff five
23 new investigative positions within each of
24 Quebec, Ontario, Alberta and BC, as well as one
25 analyst position in Ottawa to support the team.

1 Within BC, the IMLIT is situated within FSOC
2 Financial Integrity and will work
3 collaboratively with the two existing money
4 laundering teams. The IMLITs will build
5 integrated partnerships with municipal,
6 provincial and federal agencies. Their
7 objective is to reduce the capacity of organized
8 crime groups and to increase enforcement actions
9 against them by removing their assets and
10 increasing knowledge, understanding and
11 awareness of money laundering and the proceeds
12 of crime within law enforcement. I can advise
13 the commission that since Superintendent
14 Taylor's testimony in April of this year the
15 IMLIT is now fully operational and has begun its
16 first money laundering investigations.

17 Now, I'd like to turn to the issue of
18 virtual assets and currencies and Canada's
19 anti-money laundering efforts in this area.
20 Canada recognizes the significant benefits and
21 opportunity afforded by developments in the
22 realm of virtual assets. Transactions using
23 these virtual currencies can be especially
24 important for legitimate actors across the globe
25 who are unable to access traditional banking

1 systems. However, many of the characteristics
2 that make virtual assets an attractive space for
3 innovation and development also can create
4 sources of money laundering risk and
5 vulnerability through exploitation and misuse.

6 In a 2015 national risk assessment, Canada
7 identified virtual assets as high risk due to
8 their ease of access and their high degree of
9 transferability and anonymity, as well as the
10 fact that virtual assets present added
11 complexity for law enforcement investigations.
12 With recent legislative amendments to the
13 *PCMLTFA* and its regulations, including those
14 made in June of 2021, Canada has brought its
15 regulations of virtual assets in line with
16 Financial Action Task Force, or FATF, standards.
17 And I should pause here to note that these
18 legislative changes are set out in Canada's
19 closing submissions, Canada's written closing
20 submissions, at paragraphs 56 through 58, as
21 well as this commission's own overview report on
22 federal regulation of virtual currencies, which
23 is exhibit 249.

24 So Canada's recent legislative amendments
25 define virtual currency broadly so it applies to

1 a greater number of virtual currencies as well
2 as to how they are stored or administered. The
3 amendments also require service providers,
4 virtual asset service providers, to perform a
5 risk assessment when they become aware of any
6 new developments or technologies that impact
7 their businesses. This is meant to proactively
8 identify money laundering risks associated with
9 these newer and emerging technologies.

10 The amendments also require virtual asset
11 service providers to register as reporting
12 entities with FINTRAC, which means that they
13 must record keep, collect and verify client
14 information as well as report many kinds of
15 activity to FINTRAC. As a result, FINTRAC is
16 now receiving transaction reports electronically
17 from virtual currency dealers in many different
18 situations, including when these entities
19 exchange, transfer or receive virtual
20 currencies.

21 On the topic of law enforcement and virtual
22 assets, Canada has provided this commission with
23 evidence -- this commission has heard testimony
24 from a panel of three RCMP witnesses. The panel
25 testified that law enforcement investigations

1 into virtual assets are complex, time-consuming,
2 resource intensive and can be difficult to
3 pursue. The panel described how the anonymity
4 and complexity of virtual asset transactions can
5 pose significant challenges for law enforcement.
6 The panel also noted many technologies and
7 products allow bad actors to enhance the
8 anonymity of their virtual asset transactions.
9 These were described as such things as privacy
10 coins or mixers.

11 Now, money laundering investigations
12 involving virtual assets necessarily require the
13 use of emerging technologies such as transaction
14 tracing tools and data analytics, and these can
15 amplify the resources required to investigate.
16 The panel explained that while these tools and
17 new technologies assist law enforcement
18 investigations and in many respects are
19 necessary, these tools must be used in
20 accordance with Canada's privacy regulation.

21 To enhance its investigative capacity and
22 better respond to the risks of virtual assets,
23 Canadian law enforcement also participate in a
24 number of initiatives and forums to share
25 information. These include partnerships with

1 the National Cybercrime Coordination Centre, the
2 Canadian Anti-Fraud Centre and the Five Eyes
3 Cryptocurrency Operational Readiness Group. In
4 recognition of the complexities introduced by
5 virtual assets, the RCMP has also introduced
6 policy and curriculum changes meant to better
7 equip frontline officers with the tools to
8 investigate offences that have a cryptocurrency
9 component.

10 Specifically within British Columbia, the
11 RCMP has also recently launched the Cybercrime
12 Operations Group, or COG, a dedicated team that
13 aims to target cybercrime files in the province.
14 As team commander of the COG, Sergeant Krahenbil
15 testified before you that his team is expanding
16 on work that "E" Division RCMP has been doing on
17 the dark web since 2016 and he also noted that
18 his team is increasing in number.

19 Now, to conclude simply, I would say that
20 Canada's commitments in this sector demonstrate
21 how the federal AML regime is continually
22 adapting to the complexities that virtual assets
23 pose. Thank you.

24 My colleague Ms. Gardner will be now
25 speaking to you about the issues of trade-based

1 money laundering and the real estate sector.

2 THE COMMISSIONER: Thank you, Mr. Simonneaux.

3 And Ms. Gardner.

4 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**
5 **CANADA BY MS. GARDNER:**

6 Thank you, Mr. Commissioner. I would now
7 like to provide a brief overview of the key
8 evidence the commission has heard in respect of
9 Canada's anti-money laundering activities
10 relating to trade-based money laundering, or
11 TBML, before then moving on to discuss those
12 relating to the real estate sector.

13 Now, as my colleague BJ Wray noted earlier,
14 we agree with the province that it is important
15 to take a collaborative approach to addressing
16 money laundering. My submissions will touch on
17 how Canada's anti-money laundering activities
18 regarding TBML and the real estate sector
19 involve collaboration between federal agencies
20 as well as between federal, provincial,
21 territorial and international governments.

22 The commission heard from a panel of CBSA
23 and RCMP officials who discussed Canada's
24 collaborative approach to addressing TBML. That
25 approach involves federal partners, including

1 the CBSA, FINTRAC, RCMP and CRA providing
2 support and collaborating to address this
3 complex issue. In support of this approach, the
4 2019 federal budget announced \$28 million in
5 funding over four years and 10 and a half
6 million dollars per year ongoing to create a
7 multidisciplinary trade fraud and trade-based
8 money laundering centre of expertise. That
9 centre is situated within the CBSA's
10 Intelligence and Enforcement Branch. It
11 analyzes and validates information received from
12 other areas within the CBSA, as well as from
13 federal and international partners, in order to
14 build up intelligence leads on potential trade
15 fraud or TBML and ultimately make investigative
16 referrals to the CBSA's Criminal Investigations
17 Program or to the RCMP.

18 The centre also produces TBML-related
19 intelligence products to support the work of the
20 other federal partners as well as the CBSA's own
21 work. Federal partners also collaborate by
22 participating in an interagency TBML working
23 group. That includes the RCMP, CBSA, CSIS and
24 the CRA. That group was formed in 2018 and
25 meets to discuss TBML issues and collaborative

1 opportunities between those agencies.

2 Canada's collaborative approach to
3 addressing TBML recognizes the range of
4 complexity in TBML schemes as well as their
5 potential intersection with issues of trade
6 fraud and tax evasion. As the commission heard,
7 the most complex schemes can pose significant
8 challenges for investigators as they may
9 involved multiple criminal actions in numerous
10 international jurisdictions. Canada
11 participants in a number of international
12 agreements and memorandums of understanding with
13 other national governments to address that
14 cross-jurisdictional nature of TBML.

15 Finally the commission received an
16 affidavit from the CBSA detailing the new CBSA
17 assessment and revenue management project, or
18 CARM project, which has the potential to improve
19 the CBSA's ability to detect TBML related to the
20 importation of commercial goods in Canada. The
21 CARM system will be able to generate historical
22 pricing models for commodities which will enable
23 the potential detection of TBML by identifying
24 abnormal product price manipulation.

25 I'd now like to move on to provide a brief

1 overview of Canada's anti-money laundering
2 activities in the real estate sector. As the
3 commission heard, money laundering issues within
4 the real estate sector are matters of concern
5 for both provincial and federal governments.
6 Indeed, Canada has identified real estate as a
7 high-risk sector for money laundering.

8 I'll now highlight three ways in which
9 Canada is working to address the risks posed by
10 real estate. First, the federal anti-money
11 laundering and antiterrorist financing regime
12 requires real estate developers, brokers, sales
13 representatives, as well as British Columbia
14 notaries in some circumstances, to fulfill
15 certain client due diligence and reporting
16 requirements under the *PCMLTFA* and its
17 regulations. Those requirements are detailed in
18 Canada's written closing submissions at
19 paragraphs 96 and 97.

20 The evidence before the commission shows
21 that Canada continually seeks to enhance these
22 requirements as new understandings and risks
23 emerge. For example, in June of this year,
24 Canada enacted new client due diligence
25 requirements for real estate professionals, as

1 well as other reporting entities, around
2 identifying and keeping records related to
3 politically exposed persons.

4 Canada also expanded requirements to
5 collect beneficial ownership information, such
6 that they now apply to all reporting entities,
7 including those in the real estate sector.

8 Additionally, in 2019 FINTRAC published new
9 guidance for the real estate sector that
10 provides 38 specific indicators of suspicious
11 transactions. This reflects FINTRAC's ongoing
12 work to review Suspicious Transaction Reports,
13 analyze and identify trends and provide updated
14 guidance back to the industry.

15 The commission heard that suspicious
16 transaction reporting among real estate
17 reporting entities is steadily improving. In
18 2019 to 2020 there was a 38 percent increase in
19 the number of STRs from real estate reporting
20 entities as compared to the previous year.

21 Moving now to the second area in which
22 Canada has worked to address the risk posed by
23 the real estate sector. The commission heard
24 evidence from a panel of FINTRAC witnesses about
25 FINTRAC's engagement with industry partners to

1 educate them about common areas of
2 non-compliance. Between April 1st, 2017, and
3 December 4th, 2020, FINTRAC participated in
4 nearly 80 outreach activities with the real
5 estate sector across Canada. Within BC, FINTRAC
6 implemented a new memorandum of understanding
7 with the Real Estate Council of BC in March 2019
8 which allows these two agencies to share
9 compliance-related information and coordinate
10 examinations.

11 FINTRAC has also worked with provincial and
12 national real estate associations and regulators
13 to help refine their anti-money laundering
14 training modules. Further, in fall of 2020,
15 FINTRAC introduced a new tool, a welcome letter
16 which was to 172 newly licensed real estate
17 brokerages in BC to educate them about their
18 *PCMLTFA* obligations as soon as they enter the
19 industry. And the commission heard that FINTRAC
20 is exploring the possibility of rolling that
21 tool out nationwide.

22 Finally, as counsel from the province
23 highlighted earlier today, the commission also
24 heard evidence from federal and provincial
25 officials about the Canada/BC working group on

1 real estate. That working group brought
2 together nine provincial agencies and seven
3 federal bodies with anti-money laundering and/or
4 real estate expertise. In a final report to the
5 federal and provincial ministers of finance
6 which was submitted in January 2021, the working
7 group recommended further collaboration between
8 BC and federal government officials on areas
9 including leveraging real estate transaction
10 data, strengthening transparency of beneficial
11 ownership in real estate, addressing gaps in the
12 federal AML/ATF legislative framework and
13 improving the investigation and prosecution of
14 money laundering.

15 With the submission of the final report
16 earlier this year, the working group has
17 formally concluded, but the commission heard
18 that the great value of this working group was
19 the fostering of relationships and ability to
20 exchange ideas between provincial and federal
21 government officials, which the officials intend
22 to continue going forward.

23 My colleague Katherine Shelly will now
24 address federal evidence on professionals,
25 financial entities and corporations.

1 THE COMMISSIONER: Thank you, Ms. Gardner.

2 Yes, Ms. Shelly.

3 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**

4 **CANADA BY MS. SHELLEY:**

5 Thank you, Mr. Commissioner. As Ms. Gardner
6 noted, I will be providing an overview of key
7 federal evidence presented in three sectors:
8 professionals, financial entities and
9 corporations. At the outset I will speak to how
10 Canada has engaged with professional
11 organizations in order to enhance their
12 self-regulation and compliance with the *PCMLTFA*.

13 Canada has been working for a number of
14 years with provincial and territorial law
15 societies and the Federation of Law Societies of
16 Canada, the federation, to strengthen the legal
17 profession self-regulation as it relates to
18 money laundering and terrorist financing.

19 The Commissioner has heard evidence that in
20 June of 2019 Canada and the federation
21 established a joint working group. The mandate
22 of this working group is to explore issues
23 related to money laundering and terrorist
24 financing in the legal profession and to
25 strengthen information sharing between law

1 societies and the Government of Canada. I note
2 that the terms of reference for this working
3 group is exhibit 195 to the commission
4 proceeding.

5 The working group meets on a quarterly
6 basis and is co-chaired by the Department of
7 Finance Canada and the federation.
8 Representatives from provincial and territorial
9 law societies, including the Law Society of
10 British Columbia, also participate. The
11 Department of Justice is a standing member and
12 when appropriate the working group seeks input
13 from other federal entities such as the RCMP,
14 FINTRAC, and Canada Revenue Agency.

15 The working group's initial work focused on
16 sharing information with respect to data,
17 trends, typologies, indicators and case examples
18 related to money laundering and terrorist
19 financing. The working group also shared best
20 practices and overall gained a more complete
21 understanding of law societies, audit powers and
22 investigative processes.

23 The Commissioner has heard evidence of the
24 value of this information sharing. For example,
25 Gabriel Ngo, a Senior Advisor for Financial

1 Crimes Policy at the Department of Finance
2 Canada, testified that in 2019 Canada delivered
3 a presentation to the working group on recent
4 amendments to the *PCMLTFA* that included
5 providing recommendations to assist the
6 federation in aligning its model rules with
7 federal AML requirements and international
8 standards. Mr. Ngo further testified that the
9 federation was receptive to this presentation
10 and planned to consider the recommendations
11 during the next phase of amendments to the
12 federation's model rules.

13 The working group continues to meet and
14 advance their work in accordance with its
15 mandate and objectives. These objectives
16 include strengthening lines of communication
17 between the federal government and the law
18 societies, continued information sharing on
19 relevant money laundering issues, and assisting
20 the federation to enhance their guidance to the
21 legal profession on money laundering and
22 terrorist financing.

23 Unlike legal professionals, accountants and
24 accounting firms have obligations under the
25 *PCMLTFA* in its regulations where they engage and

1 prescribe specific activities. As with other
2 reporting entities they are required to
3 implement a compliance program and are subject
4 to a number of reporting, record-keeping and
5 client verification requirements. FINTRAC
6 publishes guidance materials that are tailored
7 to the accounting profession with the aim of
8 enhancing the accounting profession's compliance
9 with the *PCMLTFA*. In 2019 FINTRAC published
10 accounting specific -- accounting sector
11 specific money laundering and terrorist
12 financing indicators and in March of 2021
13 FINTRAC published guidance for accountants on
14 when to verify client identities. FINTRAC has
15 also engaged with the Chartered Professional
16 Accountants of Canada organization. From 2012
17 to 2015 FINTRAC conducted a three-year
18 examination review of the accounting sector that
19 involved review of 44 examinations across Canada
20 and the results of this review were presented to
21 CPA Canada in March of [indiscernible]. Having
22 discussed Canada's engagement with professional
23 organizations to enhance self-regulation and
24 *PCMLTFA* compliance, I will next move on to cover
25 Canada's response to the threat posed by the use

1 of corporations to launder money. The
2 commission has heard a number of witnesses about
3 the ways in which corporate structures can be
4 used to facilitate the disguise and conversion
5 of illicit proceeds by concealing corporate
6 beneficial ownership. Canada is committed to
7 combatting this misuse of corporations without
8 hindering Canadian corporations from carrying
9 out their everyday business activities.
10 Combatting the risks posed by the misuse of
11 corporations requires cooperation at the
12 federal, provincial and territorial levels, and
13 it is this cooperation that has shaped Canada's
14 recent efforts in this sector.

15 First, Canada has implemented statutory
16 changes to enhance the collection and
17 availability of beneficial ownership information
18 and address the risks around the use of bearer
19 instruments. As the province highlighted, in
20 December 2017 federal, provincial and
21 territorial ministers of finance entered into an
22 agreement to strengthen beneficial ownership
23 transparency. As part of this agreement the
24 ministers agreed to pursue legislative
25 amendments that would assist in strengthening

1 corporate transparency. As a result, Canada has
2 implemented -- has introduced several
3 legislative changes. Bill C25, which received
4 royal assent in May of 2018, amended the
5 Canadian *Business Corporations Act* to prohibit
6 the issuance of new bearer instruments and
7 required corporations presented with bearer
8 instruments to convert them into registered
9 form.

10 Bill C86, which received royal assent in
11 December 2018, amended the CBCA to require
12 corporations to create and maintain a register
13 that identified individuals with significant
14 control over the corporation.

15 Bill C97, receiving royal assent in June
16 2019, requires a corporation to provide a copy
17 of the significant control register to
18 investigative bodies where there are reasonable
19 grounds to suspect certain offences have been
20 committed by either the corporation, individuals
21 with significant control over the corporation,
22 or related entities.

23 Finally, regulatory amendments came into
24 force in June of this year that expanded the
25 application of beneficial ownership measures to

1 cover all *PCMLTFA* reporting entities.

2 While certain reporting entities, such as
3 financial institutions and MSBs, were previously
4 required to collect beneficial ownership
5 information from corporations in the trust, this
6 requirement now extends to all -- to cover all
7 *PCMLTFA* reporting entities.

8 In addition to these legislative changes,
9 Canada conducted consultations with respect to
10 the implementation of a publicly accessible
11 corporate beneficial ownership registry and has
12 committed funding for this project. In June
13 2019 the federal provincial and territorial
14 ministers of finance committed to coordinate
15 public consultations and these consultations
16 took place in the spring of 2020. Canada
17 received input from a broad spectrum of
18 stakeholders who supported the creation of a
19 central registry or registries containing
20 beneficial ownership information.

21 Canada announced funding for the
22 implementation of a registry in federal budget
23 2021/2022 and has committed 2.1 million over two
24 years to Innovation, Science and Economic
25 Development Canada to support the implementation

1 of a publicly accessible corporate beneficial
2 ownership registry by 2025. Collectively these
3 initiatives are expected to contribute to
4 enhanced corporate transparency.

5 This brings me to the final topic I wish to
6 address today: Canada's response to money
7 laundering risks present in the financial
8 institutions and money services business
9 sectors. In particular I will outline how
10 Canada is responding through legislative changes
11 and new information sharing initiatives.

12 The Commissioner has heard evidence that
13 the MSB sector in particular, money service
14 business sector in particular, is vulnerable to
15 misuse by individuals looking to launder illicit
16 proceeds of crime, though the degree of
17 vulnerability varies among MSBs. The commission
18 heard evidence from Megan Nettleton, Acting
19 Supervisor of the RCMP Financial Crimes Analysis
20 Unit, who described risks associated with MSBs
21 as well as challenges they pose for law
22 enforcement. Under the *PCMLTFA* MSB are required
23 to register with FINTRAC, provide FINTRAC with
24 transaction records, implement a compliance
25 program, verify client identities as required

1 and keep prescribed records. Following
2 amendments to the *PCMLTFA*, foreign MSBs were
3 required to register with FINTRAC by June 1st,
4 2020, and meet certain obligations under the
5 *PCMLTFA*. Foreign MSBs as defined are those that
6 do not have a place of business in Canada but
7 are engaged in the business of providing MSB
8 services directed at and provided to clients in
9 Canada. More recently the 2021 *Budget*
10 *Implementation Act* Canada proposes to introduce
11 amendments to the *PCMLTFA* to regulate armoured
12 car services as MSBs and foreign MSBs.

13 Donna Achimov, Deputy Director and Chief
14 Compliance Officer at FINTRAC, testified that
15 FINTRAC provides as much information as it can
16 to enable entities like MSBs to meet their
17 compliance objectives and reporting obligations.
18 FINTRAC regularly publishes educational
19 materials, provides seminars and engages with
20 MSB industry stakeholders. FINTRAC also assigns
21 a significant portion of its overall compliance
22 examination resources to the MSB sector. For
23 example, MSBs made up 29 percent of FINTRAC's
24 national examination plan for the 2019/2020
25 fiscal year. In 2019/2020 FINTRAC also

1 finalized a new five-year compliance engagement
2 strategy setting its overall priorities for its
3 engagement activities.

4 With respect to information sharing, the
5 Commissioner heard evidence that in BC FINTRAC
6 and the BC Financial Services Authority share
7 compliance information relating to real estate,
8 credit unions, trust companies and life
9 insurance companies that the BCFSA regulates.
10 BC is also the location of the Counter Illicit
11 Finance Alliance BC, or CIFA-BC, which is a
12 financial information sharing partnership that
13 began operations in 2021 following a yearlong
14 period of development, research and stakeholder
15 engagement.

16 The Commissioner heard from Sergeant Ben
17 Robinson of the RCMP that CIFA-BC aims to break
18 down silos and bring together a wide range of
19 public and private stakeholders across sectors
20 and jurisdictions. Sergeant Robinson testified
21 that CIFA-BC's partnership model empowers its
22 partners to collectively tackle this work and
23 draws upon partners' knowledge and subject
24 matter expertise in order to develop and deliver
25 intelligence products.

1 CIFA-BC has its origins in Project Athena,
2 a voluntary collaboration between private sector
3 financial institutions, law enforcement,
4 government and regulatory bodies to share
5 information to combat money laundering and
6 criminal activity. As highlighted by the
7 province, Project Athena was developed by law
8 enforcement officers in BC working on money
9 laundering in game facilities.

10 Project Athena's success led to its rapid
11 expansion and endorsement both nationally and
12 within the province. Recognizing this, the RCMP
13 identified the need to invest in the initiative
14 and created CIFA-BC as a permanent information
15 sharing partnership with a formal structure
16 governance and coordination function.

17 I will now turn things over to BJ Wray for
18 concluding remarks.

19 THE COMMISSIONER: Thank you, Ms. Shelley.

20 And, Mx. Wray, thank you.

21 **CLOSING SUBMISSIONS FOR THE ATTORNEY GENERAL OF**
22 **CANADA BY MX. WRAY:**

23 As mentioned earlier, I would like to
24 conclude Canada's submissions in chief by
25 spending a few minutes on the newly released

1 followup report from the Financial Action Task
2 Force. During the hearing the commission heard
3 testimony from several witnesses about Canada's
4 participation in the FATF. The FATF is an
5 independent intergovernmental body that develops
6 and promotes policies to protect the global
7 financial system against money laundering,
8 terrorist financing and the financing of
9 proliferation of weapons of mass destruction.
10 The FATF recommendations are recognized as the
11 global anti-money laundering and
12 counterterrorist financing standards. The FATF
13 conducts mutual evaluations on all member
14 countries to assess their compliance with those
15 standards. The last mutual evaluation of Canada
16 was in 2016 and the FATF's 2016 report is
17 obtained in the commission's exhibit 4 at
18 appendix N.

19 Several witnesses have noted that the 2016
20 mutual evaluation report of Canada identified
21 some deficiencies in terms of Canada's
22 compliance with some of the FATF's
23 recommendations. Since the release of the 2016
24 report, the federal government has been working
25 to address the compliance issues that were

1 identified. This new FATF followup report
2 recognizes Canada's progress on these issues and
3 it rerates Canada's compliance with the FATF
4 recommendations.

5 This followup report was only released by
6 the FATF on October the 1st, 2021. We provided
7 this new report to the commission immediately
8 upon its release, and it has now been marked as
9 commission exhibit 1061. Overall, this new
10 followup report recognizes the significant
11 progress that Canada has made since the 2016
12 mutual evaluation report. In fact the results
13 of the followup report placed Canada among the
14 best performing jurisdictions in the world. In
15 this new report the FATF sets out numerous
16 improvements that have been made to Canada's
17 regime that have now resulted in compliance
18 re-ratings by the FATF.

19 For example, as you've heard from my
20 colleague Mr. Simonneaux, businesses dealing in
21 virtual currency are now subject to the federal
22 regime. The FATF noted that Canada has taken
23 steps to deepen its understanding and analysis
24 of the money laundering terrorist financing
25 risks posed by new technologies, including

1 virtual assets and virtual asset service
2 providers.

3 As another example, this new report notes
4 Canada's improvements in requiring Suspicious
5 Transaction Reports to be submitted promptly to
6 FINTRAC. The FATF recognized that since 2016
7 Canada has made legislative amendments to
8 require reporting entities to report suspicious
9 transactions promptly to FINTRAC.

10 Other examples of improvements to the
11 federal regime that are noted in the report are
12 Canada's improved customer due diligence
13 measures in respect of politically exposed
14 persons, heads of international organizations
15 and beneficial owners. In total, Canada
16 received compliance upgrades on seven
17 recommendations that were previously rated as
18 non-compliant or partially compliant. And
19 Canada maintained its previous ratings of
20 compliant or largely compliant on five
21 recommendations where the FATF standards have
22 changed since the 2016 mutual evaluation.

23 As a result, Canada has now exited the
24 FATF's enhanced followup process in recognition
25 of the many previous deficiencies that have now

1 been addressed or largely addressed. Canada has
2 now been moved into the regular followup
3 program, which is the FATF's default monitoring
4 process with less frequent reporting
5 obligations.

6 In closing, Mr. Commissioner, I want to
7 express my sincerest thank you to the government
8 of British Columbia, to all of the other
9 participants in this inquiry and of course to
10 commission counsel for their significant
11 contributions to supporting this commission.
12 The volume of evidence tendered during this
13 inquiry, both in terms of documentary exhibits
14 and the testimony of witnesses, has been
15 extraordinary, and this evidence will
16 undoubtedly shed light on the important issues
17 before the Commissioner as he prepares his final
18 report.

19 The activities of this commission have
20 raised public awareness and understanding of the
21 threat posed by money laundering. The
22 transparency of the commission's process and the
23 ability of individuals across the country to
24 tune into these hearings via the commission's
25 website is unprecedented. Undoubtedly the

1 commission's final report will identify lessons
2 that all governments can learn from as well as
3 areas for further collaboration and cooperation
4 between governments.

5 Canada is committed to ongoing continuous
6 improvement of the federal regime but at the
7 same time respects the charter rights of all
8 Canadians. The recent federal initiatives and
9 new federal resources that have been discussed
10 today by my colleagues demonstrate this ongoing
11 commitment to strengthen Canada's anti-money
12 laundering regime. Thank you, Mr. Commissioner.
13 That concludes Canada's submissions in chief.
14 And like the province, we have reserved a bit of
15 time for reply next Tuesday.

16 THE COMMISSIONER: Thank you, Mx. Wray. I appreciate
17 the time you've taken to help the commission
18 deal with the large amount -- as you pointed
19 out, the large amount of evidence before it. It
20 has been helpful.

21 I think what we're going to do now,
22 Mr. McGowan, is take a brief adjournment. I
23 suggest 15 minutes.

24 MR. MCGOWAN: Yes, Mr. Commissioner.

25 THE COMMISSIONER: Thank you.

1 THE REGISTRAR: The hearing is now adjourned for a
2 15-minute recess until 12:01 p.m.

3 **(PROCEEDINGS ADJOURNED AT 11:46 A.M.)**

4 **(PROCEEDINGS RECONVENED AT 12:01 P.M.)**

5 THE REGISTRAR: Thank you for waiting. The hearing
6 is resumed. Mr. Commissioner.

7 THE COMMISSIONER: Yes, thank you, Madam Registrar.

8 Yes, Mr. McGowan. Am I correct that

9 Mr. Smart and Mr. Stephens for British Columbia
10 Lottery Corporation are up next?

11 MR. MCGOWAN: That's correct.

12 THE COMMISSIONER: Thank you.

13 **CLOSING SUBMISSIONS FOR THE BRITISH COLUMBIA LOTTERY**
14 **CORPORATION BY MR. SMART:**

15 Thank you, Mr. Commissioner. I will begin
16 and I am going to focus primarily on the period
17 of time prior to the E-Pirate investigation.
18 And I want to begin with considering Ms. Hughes
19 discussed sort of roles and responsibilities of
20 the different actors, and I want to begin there
21 as well.

22 Exhibit 508 is a document entitled "Roles
23 and Responsibility of Participants in the
24 British Columbia Gaming Industry." And that's
25 exhibit 508, and that was prepared in February

1 of 2010. I want to focus on the roles and
2 responsibilities of the three primary actors.
3 As that document states, Mr. Commissioner, the
4 government's role through the minister
5 responsible is to provide broad policy direction
6 to ensure BC's social and economic priorities
7 for gaming are achieved. So that's where the
8 broad policy direction comes from. GPEB's role
9 is to provide regulatory oversight. GPEB is the
10 regulator and as the document states is
11 responsibility to develop and maintain the
12 policy and regulatory framework for gaming. And
13 they have a number -- GPEB has a number of
14 responsibilities, including managing, and I
15 quote:

16 "A rigorous investigation program which
17 includes investigating all allegations
18 related to gaming and assisting law
19 enforcement agencies in all criminal
20 investigations in or near gaming
21 facilities."

22 And this is consistent with what you've heard
23 evidence about what GPEB investigators are now
24 doing or intending to do in casinos.

25 BCLC's responsibility is said to enhance

1 the financial performance, integrity, efficiency
2 and sustainability of the gaming industry in the
3 province within the policy framework established
4 by the province. So BCLC has a responsibility
5 for both the financial performance and the
6 integrity of gaming but within the government's
7 broad policy directions and subject to
8 regulatory oversight from GPEB.

9 At no time did BCLC allow revenue concerns
10 to trump AML concerns and revenue concerns never
11 drove AML efforts. You've heard evidence that
12 when staff requested enhanced AML measures or
13 increased AML staffing, they were never denied,
14 even during periods when BCLC was required to
15 reduce costs in other areas of its operation.

16 Now, you've heard evidence from well over a
17 year ago from different experts that money
18 laundering has become increasingly sophisticated
19 and international in scope over the last
20 15 years. We now have criminal organizations
21 that specialize in laundering the proceeds of
22 crime. And society's understanding of money
23 laundering typologies and appropriate anti-money
24 laundering strategies have evolved over this
25 time. So we respectfully submit to you that in

1 assessing BCLC's AML efforts at any given time,
2 caution should be exercised to avoid hindsight
3 bias as risk and solutions always seem much more
4 obvious in hindsight. Rather BCLC's AML efforts
5 should be assessed in the context of society's
6 understanding of money laundering in any given
7 time, in the context of the casino industry's
8 AML practices of the day and in the context of
9 the policy framework and directions from the
10 province and the regulator.

11 Gaming was sufficient -- significantly
12 expanded in this province in the late 1990s as
13 the province opened new casinos for table games
14 and slot machines. As these new casinos opened
15 such as River Rock, revenue increased but so did
16 large cash transactions and the risk of money
17 laundering. Patrons who engaged in these large
18 cash transactions were generally very wealthy,
19 Chinese businessmen for whom gambling large
20 amounts of cash was entertainment for them.
21 They came to casinos to gamble huge sums,
22 sometimes hundreds of thousands of dollars, and
23 they mostly lost the money they gambled. Their
24 conduct didn't fit the typical typology of money
25 laundering. They were apparently legitimate

1 gamblers whose losses generated revenue used by
2 government to help support health care,
3 education and community programs all across BC.
4 The source of the cash was unknown -- was
5 suspicious, rather, but it was unknown.

6 The government responded to concerns about
7 these large cash transactions by retaining
8 Mr. Kroeker in January 2011 to conduct a review
9 of AML measures at BC gaming facilities.
10 Mr. Kroeker, as you heard evidence about, was
11 highly qualified to conduct the review. He was
12 independent, he was the Executive Director of
13 Civil Forfeiture for the province at the time,
14 and he was someone with experience both as a
15 police officer and as a lawyer. His mandate was
16 to review AML strategies at BC gaming facilities
17 and identify any opportunities to further
18 strengthen AML efforts. He found that BCLC and
19 its operators employed standards and
20 appropriate -- I underline the word
21 "appropriate" -- anti-money laundering
22 strategies.

23 When you review his report, exhibit 141,
24 you'll see no recommendation to BCLC that it
25 refuse suspicious cash or that it conduct source

1 of funds inquiries. In fact he said BCLC's
2 obligation is primarily a duty to report and
3 reporting obligations do not extend to a duty to
4 investigate and confirm the exact provenance,
5 that is the source or origin, of cash used to
6 buy in. He said details, inquiries and
7 investigations into legitimate or illegitimate
8 sources of cash appropriately fall to various
9 law enforcement and regulatory authorities. He
10 said conclusions and statements as to the
11 ultimate legitimacy of cash should only be made
12 where there's detailed, independent information
13 verifying the source of funds and should only be
14 made by the law enforcement agencies with a
15 mandate to conduct these type of inquiries.

16 We heard evidence from Mr. Vander Graaf, who
17 didn't agree with portions of the Kroeker
18 Report, but the government and GPEB did. And
19 Mr. Kroeker's recommendations were accepted and
20 became the foundation for the government, GPEB
21 and BCLC's efforts to address the risks of money
22 laundering in BC casinos.

23 Based on the Kroeker Report, as you heard
24 evidence, GPEB developed a three-phased AML
25 strategy which focused BCLC's efforts on the

1 development of additional cash alternatives in
2 order to reduce the industry's reliance on cash.

3 BCLC spent the next few years working with
4 GPEB to develop this AML strategy, including
5 cash alternatives. I note that the province
6 says GPEB had no authority to issue directives
7 as it does now, but prior to August 2015, it
8 never sought such a directive, despite the
9 increasing volume of large suspicious cash
10 transactions. However, as industry practices
11 evolved, BCLC began to implement source of
12 funds, not just source of wealth requirements,
13 beginning in November.

14 We've seen and heard evidence about the
15 videos of large cash transactions that occurred
16 pre-E-Pirate and the question is why not just
17 reject the cash. The source of cash was unclear
18 and BCLC was doing what Kroeker -- the Kroeker
19 Report said it should do: observe and report,
20 and was doing what have generally industry
21 practice. Absent proof that the cash is
22 proceeds of crime, observe and report. This was
23 frustrating for BCLC investigators and some
24 voiced their frustration. As Mr. Vander Graaf
25 testified, however, investigators could not

1 prove even on a balance of probabilities that
2 any transaction was proceeds.

3 BC did have a know-your-customer policy and
4 the bags of cash were being tendered at casinos
5 by apparently legitimate very wealthy
6 businessmen who were generally losing their
7 money. Stephanie Brooker gave evidence. She's
8 the former director of the enforcement division
9 at FinCEN. She said that she considered source
10 of wealth was a better indicator than the source
11 of funds as to whether the source was legitimate
12 or not because source of funds may appear clean,
13 but in fact its origins are not.

14 So BCLC was faced with very wealthy Chinese
15 businessmen who apparently for entertainment had
16 the financial means or source of funds to bring
17 hundreds of thousands of dollars into casinos,
18 lose it in a matter of hours and return the next
19 day to do it all again. BCLC also understood
20 that there may be a cultural preference for
21 Chinese patrons to use cash to gamble. As they
22 were most often Chinese, caution also had to be
23 exercised to avoid any racial bias in whatever
24 AML measures BC might employ. The cash may have
25 been suspicious, but the patrons and their

1 wealth generally was not. And there were
2 plausible potential legitimate sources of cash
3 for these large amounts, legitimate money
4 service business, and I'm looking at what BCLC
5 was looking at in the period pre-2015.
6 Legitimate money service business, large amounts
7 of legitimate cash coming into Canada every
8 year. Underground banking systems, informal
9 value transfer systems could be a source of
10 legitimate funds. Jason Sharman gave evidence
11 about that fact.

12 So BCLC didn't know the source of funds and
13 were told in the Kroeker Report that's for law
14 enforcement to determine, not you. And BCLC's
15 measures, AML measures in place at the time were
16 consistent or better than elsewhere in the
17 casino industry anywhere in the world. BCLC
18 consistently hired highly qualified personnel
19 who acted reasonably and responsibly in the
20 context of the knowledge and practices of the
21 day. Individuals like John Karlovcec, Gord
22 Friesen, Daryl Tottenham, Mike Hiller, Terry
23 Towns and Brad Desmarais were former police
24 officers who spent decades fighting organized
25 crime and drug traffickers. They're honourable

1 men who didn't join BCLC to help drug
2 traffickers launder proceeds of crime.

3 BCLC investigators were repeatedly asked by
4 commission counsel, weren't you concerned about
5 the integrity of gaming? Of course they were.
6 But they couldn't prove the cash was proceeds.
7 And they had no authority to reject cash in the
8 absence of proof that it was. They were told
9 that they're no longer police officers and leave
10 it to law enforcement to investigate the source.
11 And they didn't determine policy. They had no
12 authority to reject in the absence of proof that
13 this was proceeds. But as these large cash
14 transactions increased, BCLC investigators
15 increased its efforts to get law enforcement to
16 investigate the source of these funds, as
17 Mr. Kroeker's report had suggested, and they
18 were ultimately instrumental in sparking the
19 E-Pirate investigation. They were sending
20 detailed STRs to law enforcement, GPEB and
21 they've been doing that since 2008. They used
22 their personal police contacts to encourage law
23 enforcement to investigate. They eventually
24 [indiscernible] law enforcement.

25 Mr. Desmarais established an information

1 sharing agreement with the RCMP in March 2014.
2 BCLC arranged that its CFSEU meeting between
3 CFSEU and BCLC at the Green Timbers in April of
4 2014 to request specifically to target Mr. Jin.
5 In June they help organize -- of 2014 -- a tour
6 by CFSEU of River Rock for that very purpose.
7 In July they provided top target sheets for the
8 top 10 cash facilitators. They continued to
9 pressure CFSEU, meeting them again later in the
10 year.

11 In February of 2015 they initiated a
12 complaint to the financial serious organized
13 crime about Jin and in April of 2015 E-Pirate
14 investigation was commenced but almost ended and
15 BCLC again prepared a PowerPoint for
16 investigators at FSOC about the social and
17 economic consequences of money laundering. And
18 then July 2015 came a pivotal moment. And it
19 happened because of the efforts of the law
20 enforcement and because BCLC investigators were
21 able to persuade the RCMP of the risk that money
22 laundering was occurring in the casinos and
23 needed to be a law enforcement priority.

24 These videos of cash are like -- these
25 videos of cash show not indifference by BCLC,

1 but they show a systemic failure. Once
2 government, GPEB and BCLC had information from
3 law enforcement as to the likely source of at
4 least some of the cash, they all took
5 significant immediate action. The finger
6 pointing about the years before E-Pirate doesn't
7 really assist, but viewed through the lens of
8 what we now know, everyone could and should have
9 responded more quickly to these large cash
10 transactions, but even today, it's unclear to
11 the extent to which proceeds entered BC casinos
12 prior to E-Pirate. But no one in government,
13 GPEB, BCLC or employees in the casino industry
14 knowingly allowed proceeds of crime to enter BC
15 casinos or turn a blind eye to them.

16 You'll recall that Mr. Ackles, Ken Ackles
17 from GPEB, agreed in his evidence while there
18 may be disagreements about how to address money
19 laundering, everyone, BCLC, GPEB and law
20 enforcement were trying to do the right thing.
21 The actions taken by BCLC throughout its AML
22 evolution were undertaken in good faith by
23 honourable men and women.

24 BCLC agrees with the province there's now a
25 constructive working relationship and shared

1 commitment towards addressing the risk of money
2 laundering. We're optimistic that that
3 relationship will continue in the future.

4 The only other point I want to make is just
5 this: the province is critical of BCLC's
6 efforts prior to 2015, but it raises the
7 question. The question is what BCLC did. But
8 it does raise the question what did GPEB do.
9 After all it had overall responsibility for the
10 integrity of gaming. It was the regulator.
11 What was it doing in fact besides criticizing
12 BCLC?

13 We heard evidence about investigators
14 cutting and pasting BCL reports. It was BCLC
15 who affected the information sharing agreement
16 with the RCMP. GPEB investigators wanted a
17 prescriptive cash cap but couldn't persuade its
18 own General Manager at government, so instead it
19 appeared to focus his efforts to tell BC
20 investigators what BCL should do, knowing the
21 investigators didn't have the authority to
22 institute those changes. It's somewhat
23 bewildering today that GPEB investigators didn't
24 have the authorities of Special Constables to
25 investigate criminal conduct in BC casinos or at

1 least question, question patrons as to source of
2 funds.

3 And asking a legal opinion on the morning
4 of a meeting to be given by 4:00 p.m. that day
5 whether they had legal authority as Special
6 Constables doesn't sound like they were trying
7 very hard. The real reason GPEB investigators
8 told you for not trying to interview patrons, it
9 was too dangerous.

10 So GPEB appears to have done very little in
11 our submission to address the risk of money
12 laundering prior to 2015. And with all due
13 respect to the province, their efforts to put
14 all the responsibility on BCLC suggests an
15 effort to deflect their own failures by blaming
16 the lottery corporation. Thank you.

17 **CLOSING SUBMISSIONS FOR BRITISH COLUMBIA LOTTERY**

18 **CORPORATION BY MR. STEPHENS:**

19 Mr. Commissioner, it's Mr. Stephens, and I
20 will continue and conclude. And I'd like to
21 touch on four points concisely, the first being
22 the topic of risk, the second being BCLC's AML
23 practices post-E-Pirate, the third being
24 Mr. Boyle's two reports, and the fourth some
25 closing remarks about the future.

1 Firstly, throughout this inquiry,
2 Mr. Commissioner, one word has surfaced again
3 and again, and that word is "risk." A
4 risk-based approach was recommended by FATF to
5 manage AML risk. And a risk-based AML approach
6 was not simply a preference for BCLC, as is
7 stated in paragraph 3 of the province's reply
8 submissions; it became part of BCLC's mandate in
9 its mandate letters from the province, first in
10 January 2016 and again in December 2016 and
11 October 2017. And I'm referring to exhibit 501
12 appendices 11, 12 and 15.

13 One thing is clear from this inquiry, and
14 that is whether specific cash is actually the
15 proceeds of crime is attended by uncertainty for
16 a business like BCLC which receives cash but
17 does not have law enforcement responsibilities
18 and investigative powers. Where there exists
19 uncertainty as to the existence of an adverse
20 event such as the use of proceeds of crime, this
21 is the definition of risk. And,
22 Mr. Commissioner, in our submission, one way of
23 looking at the gaming sector part of this
24 inquiry is to ask were BCLC's AML risk
25 management practices adequate, commensurate,

1 ineffective. And BCLC says the answer to this
2 question is yes, they were adequate,
3 commensurate and effective.

4 BCLC initiatives were commensurate with its
5 evolving understanding of the risks, consistent
6 with or better than comparable gaming industry
7 standards. BCLC initially focused on observing
8 and reporting, as Mr. Smart touched on, and
9 reporting to law enforcement, which is a
10 division of responsibility, BCLC observing and
11 reporting to law enforcement, that division of
12 responsibility being confirmed in the Kroeker
13 Report of 2011. But then beginning in 2013 BCLC
14 increased its AML efforts in response to rising
15 numbers of large cash transactions dedicated --
16 created a dedicated AML unit. It continued to
17 engage law enforcement and it ultimately began
18 undertaking unprecedented source of funds
19 initiatives and formal patron interviews.

20 BCLC's actions, particularly from 2014
21 forward, were assertive and ultimately effective
22 in reducing suspicious cash transactions at
23 casinos, mitigating money laundering risk in its
24 business operations and assisting law
25 enforcement. BCLC engaged in responsible and

1 appropriate risk management throughout,
2 consistent with best AML practices of the time
3 period.

4 The second point I wish to touch on briefly
5 is BCLC AML practices post-E-Pirate. And you've
6 heard a significant amount of evidence on this
7 and you have heard through several witnesses the
8 evidence of the intelligence BCLC received from
9 FSOC in July 2015 concerning E-Pirate. And that
10 was a significant development and caused BCLC to
11 change and accelerate its AML risk management
12 practices. And just some examples of key steps
13 and AML achievements following the receipt of
14 this FSOC information include the cash
15 conditions program, as Mr. Smart said, which had
16 started in November 2014 before E-Pirate but was
17 accelerated, and in August of 2015 10 further
18 patrons were placed on cash conditions;
19 September 11, 2015, 26 more patrons on cash
20 conditions, and formal patron interviews took
21 place from 2015 onward. And indeed,
22 Mr. Commissioner, you have in the evidentiary
23 record in Mr. Tottenham's affidavit number 2 at
24 exhibit 149 interview summaries from 2015 to
25 2019 that BCLC conducted. And these patrons put

1 on cash conditions, Mr. Tottenham deposed, were
2 "due to their history of buy-ins facilitated by
3 Mr. Jin or his related associates and these
4 included some of the highest valued casino
5 patrons in the province."

6 The impact of these AML measures were felt on
7 decreased STRs and increased activity in player
8 gaming fund account or cash alternative accounts
9 in the months and years that followed.

10 Mr. Commissioner, we would say and I would
11 note that my friends, the counsel for the
12 Attorney General of BC, remarked that an
13 effective AML solution must be flexible and
14 responsive or flexible and adaptive, and BCLC
15 submits that on this evidence that's before you,
16 BCLC's AML approach was indeed flexible and
17 responsive and flexible and adaptive.

18 Certainly, Mr. Commissioner, I'd like to
19 touch on Mr. Boyle's reports, which are exhibits
20 1037 and 1038 in the evidentiary record. And in
21 your interim report of November 2020, you
22 identified AML practices in other jurisdictions
23 as relevant to the Commissioner's mandate. And
24 Mr. Boyle's reports addressed this topic
25 squarely. Some key features of Mr. Boyle's AML

1 report include that cash conditions of the sort
2 introduced by BCLC in November 2014 and August
3 2015 were novel in the gaming industry's
4 jurisdiction surveyed by Mr. Boyle. And in
5 addition, the formal patron interviews regarding
6 source of funds conducted by compliance staff of
7 the sort introduced by BCLC in 2015 were novel
8 in the gaming jurisdictions he surveyed. And
9 that the source of fund receding at \$10,000 or
10 higher implemented by BCLC in 2018 was BC
11 specific.

12 Mr. Boyle has practical experience in the
13 operators in the US and Canada, including
14 Ontario among other jurisdictions, and is
15 knowledgeable of operator practice from
16 interviews conducted during a preparation of a
17 2016 American Gaming Association AML report he
18 participated in authoring. In his oral
19 testimony, Mr. Commissioner, Mr. Boyle answered
20 questions about his report objectively and
21 fairly to assist the commission with the factual
22 issues related to the commission's mandate,
23 including on the issue of known play. In
24 response to submissions made by the province in
25 their written reply, no one suggested to

1 Mr. Boyle on cross-examination that the content
2 of his report was somehow improperly influenced
3 by the fees which were charged to BCLC.

4 In his reports Mr. Boyle acknowledged and
5 certified in each of them that his duty to
6 assist the court, this commission, and give oral
7 evidence in accordance with that duty and our
8 submission he did just that and no one suggested
9 otherwise to him during cross-examination. BCLC
10 believes that Mr. Boyle's evidence and report on
11 AML practices and known play are worthy of
12 weight and are of assistance to the commission
13 and its mandate.

14 Just by way of closing remarks into the
15 future, Mr. Commissioner. Throughout the time
16 period surveyed by the commission the British
17 Columbia Lottery Corporation, a provincial crown
18 agent, has discharged its statutory
19 responsibilities to conduct and manage gaming
20 with integrity and professionalism. BCLC sought
21 to implement AML best practices and we believe
22 the evidence demonstrates it did so.

23 Going forward, BCLC wishes to continue with
24 its pursuit of AML best practices and its
25 corporate ethic of striving for best practices

1 in AML through the pursuit of known play.
2 100 percent known play is an additional AML risk
3 management procedure being actively considered
4 by BCLC at this time. And Mr. deBruyckere in
5 his third affidavit, exhibit 485, states to that
6 effect.

7 In closing, Mr. Commissioner, BCLC requests
8 that the Commissioner recommend, if the
9 Commissioner thinks it to be meritorious, that
10 BCLC continue to pursue the potential
11 implementation of 100 percent known play in
12 consultation with GPEB and service providers at
13 the BCLC casinos. Mr. Commissioner, those are
14 BCLC's submissions. I believe we have an amount
15 of time left and we reserve that for reply,
16 please.

17 THE COMMISSIONER: All right. Thank you, Mr. Stephens.

18 Mr. McFee, I see you on the screen, but I
19 have an indication here that -- oh, I'm sorry, I
20 misinterpreted my indication. Are you set to
21 proceed?

22 MR. McFEE: I am, Mr. Commissioner.

23 THE COMMISSIONER: Good, thank you.

24 **CLOSING SUBMISSIONS FOR JIM LIGHTBODY BY MR. McFEE:**

25 Thank you. At the outset of my

1 submission -- Mr. Commissioner, as you know, I
2 act on behalf of the President and CEO of
3 British Columbia Lottery Corporation,
4 Mr. Lightbody -- I'd like to focus on for a
5 moment, bring us back to the ground level and
6 focus on the commission's task and the purpose
7 of these many days of hearing and the arduous
8 task you now have in terms of assembling,
9 digesting, analyzing all this evidence and make
10 your findings and what is the purpose.

11 And I'd like to refer to the terms of
12 reference of the commission, and they are, as
13 you're aware, to conduct hearings and make
14 findings of fact respecting money laundering in
15 British Columbia, including the extent, growth
16 and evolution of the methods of money laundering
17 in the following sectors, including gaming,
18 which of course directly engages my client's
19 interests. And then secondly, to make findings
20 of fact and deal with the acts and omissions of
21 regulatory authorities and individuals with the
22 powers, duties or functions in respect of
23 sectors such as gaming and to determine whether
24 those acts or omissions have contributed to
25 money laundering in British Columbia and whether

1 those acts have amounted to corruption. And
2 importantly from my client's perspective, a
3 third task you've been given is to deal with the
4 scope and effectiveness of the powers and duties
5 and functions exercised and carried out by
6 regulatory authorities or individuals.

7 And in my submission by way of overview, an
8 evaluation of the totality of the evidence
9 before you respecting Mr. Lightbody's
10 performance of his duties and functions, so
11 referring directly to the tasks you've been
12 given and the terms of reference is duties and
13 functions as firstly the VP of casinos and
14 community gaming for BCLC and then as the
15 president and CEO of BCLC in the context of the
16 state of knowledge in the gaming industry
17 respecting money laundering and AML measures
18 and, again, in the context of the guidance and
19 direction provided to him and BCLC by the
20 regulators FINTRAC and GPEB and third party
21 experts. When one evaluates Mr. Lightbody's
22 acts in those context, it will, in my the
23 submission, lead you and leads one in my
24 respectful submission to the inevitable
25 conclusion that Mr. Lightbody was an effective

1 principal and collaborative leader who was
2 committed to addressing and reducing the risks
3 of illicit proceeds entering BC casinos.

4 Tellingly, the evidence compellingly
5 establishes that under Mr. Lightbody's
6 leadership BCLC, contrary to assertions in the
7 media and statements that were made occasionally
8 by politicians, did not turn a blind eye to the
9 risk of illicit proceeds entering BC casinos,
10 rather Mr. Lightbody and his team were diligent
11 in responding to money laundering risks as they
12 were identified and built and continually
13 strengthened BCLC's anti-money laundering
14 regime.

15 Now, you've heard much evidence and I don't
16 expect that it all comes to mind instantly, but
17 you may recall that Mr. Lightbody became
18 involved in the casino sector for the first
19 time, and the timing is important, in June of
20 2011 when he was appointed the VP of Casinos and
21 Community Gaming. And that timing is important
22 because Mr. Lightbody's appointment came at a
23 very formative stage in the development in the
24 gaming industry and in BCLC's history of an
25 understanding of money laundering and how to

1 respond to it. And specifically, as Mr. Smart
2 pointed out, in February of 2011, Mr. Kroeker
3 delivered his report to the government of
4 British Columbia anti-money laundering measures
5 in BC casinos. And as you heard, Mr. Kroeker
6 was an independent pre-eminent expert in the
7 field of proceeds of crime and money laundering.

8 So when Mr. Lightbody assumed this new role,
9 his first involvement in the casino industry,
10 he, BCLC, the government and the gaming industry
11 were in the initial stages of analyzing and
12 responding to the Kroeker Report. And Mr. Smart
13 has referred already to some of these, but from
14 Mr. Lightbody's perspective certain key findings
15 and aspects of Mr. Kroeker's report bear
16 emphasis as they inform Mr. Lightbody about
17 BCLC's practices when appointed and what further
18 action was required. And as Mr. Smart pointed
19 out, Mr. Kroeker said that BCLC and its
20 operators with oversight and guidance from GPEB
21 employed standard and appropriate anti-money
22 laundering strategies. So at a foundational
23 level, BCLC was compliant.

24 And Mr. Kroeker went on in terms of BCLC's
25 obligation and he said BCLC's obligation is

1 primarily to report. These reporting
2 obligations do not extend to a duty to
3 investigate and confirm the exact providence of
4 cash used to buy in. And as Mr. Smart pointed
5 out, Mr. Kroeker was clear that those type of
6 investigative ventures making detailed inquiries
7 were properly within the mandate of enforcement
8 agencies of law enforcement and the regulator.

9 Now, as you've heard, in response to
10 Mr. Kroeker's report, the province established
11 the AML cross-divisional working group within
12 GPEB to develop and implement an improved AML
13 strategy. And as you've also heard after
14 considerable deliberations, the GPEB AML
15 cross-divisional working group developed this
16 three-page -- three-phase AML strategy you heard
17 much about. But the core component of this
18 strategy is set out in their documentation and
19 it is the gaming industry will prevent money
20 laundering in gaming by moving from a cash-based
21 industry as quickly as possible and scrutinizing
22 the remaining cash for appropriate action. That
23 was the core goal and principle of the
24 province's AML strategy responding to
25 Mr. Kroeker's report, and it was picked up by

1 BCLC. So it's against that background that the
2 recent Kroeker Report and the development of
3 this AML strategy that Mr. Lightbody enters the
4 casino sector.

5 And Mr. Lightbody, as you heard,
6 immediately and enthusiastically embarked on
7 effects to develop and implement the recommended
8 AML strategies. You heard that he was a member
9 of the steering committee on cash alternatives.
10 You heard that he was a very active member of
11 the casino service providers working group. You
12 also heard that he advocated for and developed
13 the development of a table and E-game strategy
14 to move a significant portion of BCLC's business
15 away from these high limit table games to allow
16 casual, light and moderate patrons to enjoy the
17 casino experience.

18 And then, as you know, in February of 2014,
19 after Mr. Graydon's departure, Mr. Lightbody was
20 appointed the interim president and CEO of BCLC.
21 And he moved quite rapidly to enhance BCLC's AML
22 regime. You heard evidence about the
23 establishment of the dedicated AML unit, the
24 expansion of that unit. And the theme of the
25 evidence, the constant message in the evidence

1 from BCLC investigators, from BCLC investigators
2 and executives was that Mr. Lightbody's constant
3 approach to AML was he was clear that he was
4 prepared to invest in the AML unit and to
5 provide the unit with the resources and
6 personnel required to develop a strong AML
7 strategy and in fact be a best in class
8 organization.

9 And as you heard, he followed through on
10 those words with action. You may recall the
11 evidence that when Mr. Lightbody was appointed
12 the interim president CEO in 2014, the AML unit
13 comprised of four individuals. As Mr. Alderson
14 described, by 2016 that unit comprised 32 staff
15 members.

16 BCLC also invested in the enhancement of a
17 data analytics capacity under Mr. Lightbody.
18 But despite those efforts, as you heard, in
19 2013, 2014, BCLC experienced and observed a
20 marked increase in table game revenue and with
21 that an increase in the number and size of
22 suspicious cash transactions and large cash
23 transactions. BCLC and Mr. Lightbody obviously
24 were aware of these increases but had no
25 visibility into the source of these funds other

1 than they came principally from wealthy Chinese
2 patrons who had a preference to utilize cash.

3 As we know, BCLC's AML strategy was
4 informed by and built upon Mr. Kroeker's expert
5 advice and the guidance it was receiving from
6 GPEB's AML strategy. And that is obviously that
7 BCLC's duties didn't extend to investigating and
8 determining the exact source of those funds.
9 Rather that fell to law enforcement authority.
10 Yet -- and this is crucial -- that this is the
11 precise time where when there had been for some
12 considerable period in consequence of the
13 disbandment of IIGET and the restructuring of
14 the RCMP's federal policing units virtually a
15 complete absence of law enforcement in gaming in
16 British Columbia. A crucial element in the
17 chain of detection and enforcement was missing.

18 As Dr. German put it in his testimony, the
19 RCMP were not present in the casino whorl in the
20 years prior to 2015. So enforcement was left in
21 large part to the police of jurisdiction, who,
22 as the Commissioner has heard, on any version of
23 events didn't have the expertise and resources
24 to conduct investigations into money laundering.
25 As you've heard insistently from several

1 witnesses, money laundering investigations are
2 complex, time consuming, resource intensive and
3 require subject matter expertise. And that's
4 key, subject matter expertise. People that
5 understand money laundering typologies that have
6 surveillance abilities, that understand how
7 organized crime operates. These aren't skills
8 that front line officers necessarily can be
9 expected to have.

10 And it's in this 2013, early 2015 time
11 frame the evidence is consistent that both BCLC
12 and GPEB were frustrated by the process whereby
13 they completed and provided comprehensive
14 reporting of suspicious cash transactions, large
15 cash transactions to FINTRAC and to the police,
16 yet nothing appeared to be taking place on the
17 enforcement level. And we know now from the
18 evidence that we've heard from law enforcement
19 that accepting IPOC's investigation in 2010,
20 2011 that didn't really lead anywhere, there
21 really wasn't any enforcement action being taken
22 on the ground at that time. But BCLC under
23 Mr. Lightbody didn't just accept the status quo.
24 The evidence you've heard establishes that BCLC
25 took very proactive steps to engage law

1 enforcement. And those have been described by
2 Mr. Smart. I won't repeat them. But despite
3 those considerable efforts there was no active
4 police involvement still in casinos until
5 Mr. Desmarais, relying on his personal contacts,
6 was able to meet with Superintendent Chrustie
7 and engaged FSOC in February of 2015. And it's
8 BCLC's effort that led to the first
9 investigation of cash entering casinos by law
10 enforcement since 2011, in this crucial period
11 of time, and resulted in the E-Pirate. It led
12 to the RCMP advising BCLC and GPEB for the first
13 time in July 2015 that their investigation had
14 uncovered evidence of a money service business
15 in Richmond that was suspected of lending
16 proceeds of crime to casino patrons who were
17 then used in BC casinos.

18 This developed into an understanding of
19 what now has been termed and coined the
20 Vancouver model. But all of these matters were
21 relatively new and revelations at the time. And
22 the evidence you've heard is that Mr. Lightbody
23 said he considered this to be a pivotal moment,
24 and it was. It was a pivotal moment for him, it
25 was a pivotal moment for BCLC and it was a

1 pivotal moment nor GPEB.

2 Mr. Lightbody required that his organization
3 respond to this revelation quickly and
4 purposefully. The cash condition source of
5 funds program that you've heard so much about
6 that had already been initiated was accelerated
7 and ramped up. It was appropriately a
8 risk-based program that the Commissioner has
9 heard focused initially on the highest limit,
10 highest risk patrons and then continuously
11 evolved, with BCLC evaluating risk thresholds
12 and adjusting such that BCLC investigators
13 interviewed after the high-risk patrons,
14 moderate risk patrons and when Dr. German issued
15 his interim recommendation in December of 2017,
16 you may recall that BCLC's cash condition
17 program had evolved to the point where
18 investigators were preparing to consider cash
19 conditions for patrons buying in at the 30- and
20 \$40,000 level. There had been a steady
21 adjustment of the risk and evolution.

22 BCLC under Mr. Lightbody's leadership
23 didn't content itself with the cash conditions
24 program despite its success. In addition and
25 importantly, as you've heard, Mr. Lightbody had

1 BCLC engage in the concept of initiating a
2 dedicated law enforcement gaming unit.
3 Mr. Lightbody recognized the need for such a
4 unit and was proactive in addressing it. You
5 may recall that Mr. Lightbody was the first
6 person to raise this concept in his August 24th,
7 2015 letter to the minister, Minister de Jong.
8 He recognized this law enforcement gap and he
9 took steps to activate it.

10 Mr. Lightbody and Mr. Smith, the chair of
11 BCLC, raised this issue again with Minister de
12 Jong at the late September 2015 ministerial
13 briefing. And the evidence is that these
14 efforts were absolutely instrumental in the
15 creation of JIGIT in April of 2016. So put
16 simply, BCLC's efforts under Mr. Lightbody's
17 direction resulted in the law enforcement gap,
18 this crucial gap in the multi-pronged efforts
19 necessary to detect and deter money laundering
20 being addressed and filled.

21 And the implementation of the cash
22 conditions program and the reengagement of law
23 enforcement in the gaming sector as we've seen
24 had a dramatic effect on the size and number of
25 suspicious cash transactions and large cash

1 transactions. In terms of the adage of a
2 picture is worth a thousand words, you'll recall
3 the graphs prepared by Ms. Cuglietta, they show
4 that the value of STRs and LCTs in number
5 literally fell off a cliff after the
6 September 15th ramping up of the cash conditions
7 program and long before, long before the
8 implementation of Dr. German's December 17th --
9 December 2017 interim recommendation.

10 As the commission has heard, BCLC's efforts
11 under Mr. Lightbody's leadership to enhance the
12 AML protocols continued thereafter, including
13 the 2016 requirement that service providers
14 conduct and review video surveillance prior to
15 accepting suspicious cash transactions. The
16 June 2017 implementation of reasonable measures.
17 The derisking of money service businesses in
18 2018. So Mr. Lightbody stands before this
19 commission proud of his accomplishments and
20 proud of BCLC's response to the challenges it
21 faced.

22 However, it's important that Mr. Lightbody
23 respond to certain potential criticisms of
24 BCLC's actions during Mr. Lightbody's tenure.
25 And in particular that is that BCLC should have

1 implemented the cash conditions program at an
2 earlier date. And more pointedly that BCLC
3 should have implemented a state -- a source of
4 funds requirement at a prescribed threshold
5 similar to Dr. German's 2017 interim
6 recommendation at an earlier date. And in fact
7 the province submits to this commission that
8 that is what GPEB was requiring BCLC to do in
9 Mr. Mazure's letters to Mr. Lightbody that
10 you've heard much about that commenced with
11 Mr. Mazure's August 7th, 2015 letter through to
12 his May 8th, 2017 letter. Well, the evidence is
13 before the commission and you recall that
14 Mr. Mazure was cross-examined about those
15 letters, but when one examines the actual
16 content, when one looks at the actual content of
17 Mr. Mazure's letters, this submission isn't
18 borne out. The letters on their face show that
19 Mr. Mazure was advancing suggestions and asking
20 BCLC to give appropriate consideration to
21 enhancing know your client requirements with a
22 focus on source of wealth and source of funds
23 within a risk-based format.

24 And perhaps most importantly, Mr. Mazure in
25 his evidence, in his own evidence, testified

1 that when he wrote the final letter in this
2 series of -- on May 8th, 2017, he didn't know
3 that BCLC was interviewing patrons, that BCLC
4 considered to be high or medium -- at a high or
5 medium risk level. Put simply, Mr. Mazure was
6 suggesting BCLC draw the line a little lower in
7 the absence of any understanding of where BCLC
8 was already drawing the line.

9 In summary, the evidence doesn't support
10 the assertion that GPEB directed Mr. Lightbody
11 to implement a source of funds declaration in
12 2015 or thereafter and certainly cannot in any
13 way support any assertion that Mr. Lightbody or
14 BCLC failed to respond in an adequate fashion to
15 the revelations from the RCMP E-Pirate
16 investigation.

17 Now, Mr. Lightbody is disappointed that at
18 times the proceeding before the commission --
19 proceedings before the commission have evolved
20 into finger pointing and although it's necessary
21 for him to respond to the assertion that he was
22 directed to have BCLC implement a source of
23 funds program, he doesn't wish to engage in
24 finger pointing. Mr. Lightbody's considered
25 position as stated in his testimony before the

1 commission is that an effective AML regime
2 requires all of the key participants in the
3 gaming sector, the service providers, BCLC,
4 GPEB, FINTRAC and law enforcement, to be
5 actively engaged in working collaboratively.

6 Unfortunately the evidence before the
7 commission shows that at material terms -- at
8 material times that didn't happen. Law
9 enforcement was unfortunately absent in the
10 casino sector in crucial periods. And
11 unfortunately at material times the key players
12 didn't work as collaboratively as one might have
13 hoped. However, in terms of collaboration and
14 working together, that changed very much
15 vis-à-vis the relationship between BCLC and GPEB
16 when Mr. Lightbody was appointed the President
17 and CEO.

18 As Ms. Hughes on behalf of the Province
19 pointed out this morning, 2011 to 2014 was a
20 difficult time in the relationship between GPEB
21 and BCLC, and as Ms. Hughes pointed out things
22 changed in part after there was the 2014
23 internal GPEB review and the leadership change.
24 But not coincidentally and importantly, they
25 also changed because Mr. Lightbody became the

1 leader of BCLC at the same time. And you heard
2 absolutely consistent evidence from each of the
3 general managers that Mr. Lightbody had to deal
4 with, each of the Assistant Deputy Ministers,
5 each of the Associate Deputy Ministers, as to
6 Mr. Lightbody's management style, which was to
7 be collegial, to be frank and transparent, and
8 to be approachable and to approach all matters
9 in a collaborative manner. And that's the way
10 BCLC operated and continues to operate under his
11 leadership.

12 During Mr. Lightbody's period of
13 leadership, the evidence establishes that BCLC
14 worked diligently to engage the other needed
15 participants and work together in the fight
16 against money laundering, to approach matters in
17 a collaborative fashion, to address gaps as they
18 existed. The evidence is overwhelming, in my
19 respectful submission, that Mr. Lightbody's
20 efforts met with success. Law enforcement was
21 reengaged. We now have a permanent law
22 enforcement presence in the form of JIGIT. GPEB
23 and BCLC, as the Province has pointed out and
24 Mr. Lightbody wholeheartedly agrees, are working
25 collaboratively with the common goal of

1 eradicating money laundering in the BC gaming
2 sector. That said, Mr. Lightbody recognizes
3 that the work is never done.

4 The commission has heard much evidence that
5 organized crime and professional money
6 laundering networks are nimble. They're ready
7 to exploit and identify weakness. We've seen
8 that they exploited and identified weakness in
9 the period of 2011 through early 2015 in the BC
10 gaming industry.

11 Mr. Lightbody will continue to work
12 collaboratively with all members and all
13 participants in the gaming sector and he looks
14 forward to and welcomes the findings and
15 guidance that will come from this commission to
16 assist in that endeavour.

17 Those are my submissions.

18 THE COMMISSIONER: Thank you, Mr. McFee.

19 I'll now turn to Ms. Herbst on behalf of
20 the Law Society of British Columbia.

21 **CLOSING SUBMISSIONS FOR THE LAW SOCIETY OF BRITISH**
22 **COLUMBIA BY MS. HERBST:**

23 Thank you, Mr. Commissioner. Closing
24 submissions in this inquiry are a bit of an
25 unusual exercise for many of us engaged as

1 counsel. And that's come through a bit this
2 morning as well. Unlike in some trials, much of
3 the exercise is forward looking, although of
4 course importantly building on lessons learned
5 from the past.

6 After the lawyers representing participants
7 in this inquiry have moved on to other files,
8 the day-to-day work of combatting money
9 laundering will remain. At the Law Society, my
10 client, the individuals who carry on that AML
11 work are the benchers and the staff who devote
12 the time, effort and resources to the public
13 interest. These are the individuals who think
14 through the rules that should be implemented,
15 educate students and members, conduct audits and
16 investigations and run disciplinary proceedings.
17 These are also the individuals who believed in
18 the importance of the Law Society's full and
19 active participation in this inquiry and they
20 are the individuals who made that happen.

21 The Law Society recognizes that legal
22 professionals are exposed to money laundering
23 risks and recognizes the concerns that have
24 animated the commission's work both in relation
25 to professional services and in relation to

1 fields that lawyers practise in.

2 As such, the Law Society was adamant about
3 engaging formally as a participant in this
4 inquiry with the document production obligations
5 that that entailed. It dedicated enormous
6 resources, as was acknowledged in the interim
7 report, to complying with those obligations and
8 it produced many thousands of documents in the
9 course of the inquiry itself.

10 The Law Society shared information with the
11 public preparing detailed exhibits that
12 described the Law Society's work in areas such
13 as trust assurance and including compliance
14 audits, education, rule making, investigations
15 and discipline. And key exhibits in that regard
16 are in the 226 to -- 222 to 226 range, among
17 others. It made public its AML strategic and
18 operational plans, and this is of course in
19 addition to the information that's available to
20 the public on the Law Society's website, which
21 includes an AML specific page that has numerous
22 links to areas of its programming, such as trust
23 assurance and so on.

24 The Law Society put forward a witness panel
25 composed of its President, Chief Executive

1 Officer, Chief Financial Officer and Deputy
2 Chief Legal Officer, each of whom play vital AML
3 roles. They were present to answer questions
4 over a two-day period in last November,
5 difficult as it is to believe, and the roles
6 that they occupy very much touch on the mandate
7 of this commission and the AML efforts that the
8 Law Society undertakes on an ongoing basis. For
9 example, the Chief Executive Officer is also the
10 Executive Director and fulfills various
11 statutory mandates as well as having oversight
12 role over what goes on at the Law Society in
13 terms of AML efforts and their development. The
14 Chief Financial Officer is also the Director of
15 Trust Regulation and she, as such, has oversight
16 over the trust assurance program and forensic
17 accounting functions.

18 The Deputy Chief Legal Officer, Ms. Bains,
19 oversees the investigations, monitoring and
20 enforcement group and as such plays a key role
21 in the investigative work that underpins the
22 investigation of serious misconduct that can
23 lead to disciplinary proceedings.

24 Ms. Bains and Ms. McPhee, the Chief
25 Financial Officer, both participate in the

1 Federation of Law Societies of Canada working
2 group on money laundering and anti-money
3 laundering efforts. More generally, the Law
4 Society also closely followed and engaged with
5 the substance of the evidence that was otherwise
6 adduced in this inquiry, and I share of course
7 the notes that other participants have made in
8 terms of recognizing the work that commission
9 counsel have done in pulling that together.

10 In its written closing the Law Society
11 tackled in detail both the evidentiary record
12 and the questions that were put forward in the
13 helpful outline from commission counsel in May
14 of 2021. The written closing that the Law
15 Society put forward dealt with matters such as
16 acknowledged risks, the evidence as to whether
17 those had come to fruition in BC in relation to
18 the legal profession and its views regarding
19 reporting requirements.

20 The Law Society also set out in that
21 written closing various specific recommendations
22 that would, if adopted by the commission and if
23 implemented, further assist in the Law Society's
24 AML efforts.

25 The four Law Society witnesses who

1 testified last November represented a much
2 larger team of people at the Law Society who
3 played integral roles, both in the Law Society's
4 active participation in this inquiry and, beyond
5 that, who devote enormous energy and care to the
6 Law Society's broader AML efforts.

7 In the balance of my closing submission
8 today, I want to focus on five main points that
9 have guided the participation of the Law Society
10 ventures and staff in this inquiry and also
11 guide their ongoing AML efforts, and these are
12 points that resonate from the time of our
13 opening submission, our opening statement in
14 February of 2020, they were found in our
15 evidence and they have a role in each of our
16 closing submissions, so our submissions of
17 July 9th and July 30th as well as our brief
18 further submission of August 10th.

19 So the first of these points is the public
20 interest. And in particular the fact that the
21 public interest is at the core of what the Law
22 Society does. The Law Society is not a
23 professional association and its role is not to
24 represent lawyers. By statute its role is to
25 uphold and protect the public interest in the

1 administration of justice that's found in
2 section 3 of the *Legal Profession Act* and it
3 infuses all that the Law Society does.

4 The public interest is deeply engrained in
5 all the ventures and the Law Society staff do.
6 The Law Society witnesses who testified last
7 November were passionate and dedicated in
8 expressing this and in implementing it day to
9 day. They were clear that their mandate turns
10 on the public interest and that the public
11 interest includes combatting money laundering.

12 Unlike the situation with certain of the
13 regulators and regulatory bodies who have a role
14 in this commission and AML work, there's no
15 dispute by any participants that the Law Society
16 has jurisdiction in relation to money laundering
17 as part of its public interest mandate, and no
18 dispute as to the importance of the Law
19 Society's role.

20 Second of the five points is that the
21 regulation of lawyers is extremely rigorous.
22 Not being subject to the obligations of the
23 *PCMLTFA* for constitutional reasons should in no
24 way be taken as synonymous with a lack of
25 regulation or a lack of accountability. And I

1 say this for several reasons. One, is that the
2 code and the rules that govern lawyers in BC set
3 an extremely high standard that lawyers have to
4 abide by. Lawyers must never engage in activity
5 that they know, or ought to know, is connected
6 in any way with money laundering. If a lawyer
7 knows or ought to know that money laundering or
8 any other dishonesty, crime or fraud is
9 occurring, the lawyer must immediately cease
10 acting. The lawyer's obligation is to put an
11 end to their involvement, not give notice and
12 simply watch matters unfold. That's not good
13 enough.

14 Numerous Law Society rules regarding
15 matters such as client identification and
16 verification are very detailed and require much
17 from lawyers and from law firms in terms of
18 compliance. However, those rules have been
19 imposed to guard against the threat of money
20 laundering coming into fruition and lawyers must
21 abide by them.

22 Now, the obligations on lawyers aren't
23 collecting dust. They're updated and
24 communicated, compliance with them is monitored
25 and they are enforced. The Law Society gives

1 careful consideration to the content and wording
2 of its rules and how they should best evolve,
3 including, as I've pointed out briefly, through
4 very active participation at the national level
5 in the development of model rules at the
6 Federation of Law Societies of Canada and
7 through the working group that is presently
8 engaged in that further rule development. And
9 our Law Society was the first Law Society in
10 Canada to implement the cash limitation rule in
11 2004. So it has a central role in drafting and
12 a central role in implementing and making sure
13 those rules are in force.

14 The Law Society has active engaged practice
15 advisors and it has education programs and
16 publications to communicate lawyers' obligations
17 both to incoming members of the legal
18 profession, students at PLTC and otherwise, and
19 to its existing members. The Law Society has a
20 formidable trust assurance program to ensure
21 it's rules are followed. Its tools include
22 compliance audits which provide the Law Society
23 with visibility into trust accounts and which
24 are done even in the absence of any complaint
25 having been received against the law firm being

1 audited, and that's set out in part in part 4 of
2 the closing submissions and is a central feature
3 of exhibit 225 that was filed in the inquiry.

4 The Law Society also has a dedicated
5 investigations and discipline group and any
6 person -- and it's worth emphasizing both for
7 the audience within the commission and the
8 participants here, but also for any member of
9 the public watching -- any person who believes
10 that a lawyer or law firm has been guilty of
11 professional misconduct, conduct unbecoming to
12 the legal profession or a breach of the *Legal*
13 *Profession Act* or Law Society rules can make a
14 complaint to the Law Society. The Law Society
15 also opens files on its own initiative when
16 conduct concerns come to its attention,
17 including through media reports, court
18 documents, compliance audits and mandatory
19 self-reports from lawyers.

20 Third of the five points is this: the Law
21 Society can do things that governments cannot in
22 order to advance AML objectives. Because of the
23 Law Society's statutory ability to maintain
24 client privilege during investigations and
25 audits and because of its independence from the

1 state, the Law Society can constitutionally
2 exercise powers that governments lack. The Law
3 Society has visibility, as I noted, on which
4 firms have trust accounts and what flows through
5 them. The Law Society may also impose powerful
6 sanctions on lawyers such as suspension or
7 disbarment from the practice of law in the
8 appropriate circumstances.

9 There's no doubt that the Law Society is
10 fully aware of what you described,
11 Mr. Commissioner, in the interim report, quite
12 rightly, as the heavy onus on it. Again, the
13 Law Society urges government bodies, law
14 enforcement bodies, other agencies, other
15 regulators in the public to refer any concerns
16 that they have about lawyers to it for
17 investigation.

18 Fourth, and I'm echoing here the words of
19 Mr. McFee just recently, the Law Society knows
20 that the work on AML is never done. There is
21 always more to learn and there is always the
22 potential for new money laundering typologies to
23 emerge. Correspondingly, the Law Society is
24 committed to exploring any areas for
25 improvement. Its participation in this inquiry

1 underlines the care and commitment its ventures
2 and staff take in monitoring developments in
3 this field. They educate themselves, including
4 various staff becoming certified anti-money
5 laundering specialists. They consider
6 thoughtfully and responsively what, if any,
7 changes should be made to their rules and
8 practices. They ensure that staffing and
9 budget, a key element of the evidence, are
10 increased to deal with AML issues and related
11 issues that the Law Society faces. And they
12 have suggested recommendations to assist in
13 their AML efforts.

14 The interim report rightly noted that money
15 laundering is an issue of great importance to
16 the citizens of British Columbia and it noted as
17 well that the commission will do its utmost to
18 uncover the nature and scope of the problem and
19 ensure that those involved in the fight against
20 money laundering have the information and tools
21 they need to address it.

22 In its suggested recommendations, the Law
23 Society seeks to ensure that it has that
24 information and has those tools to the extent
25 that they may be lacking or that they're

1 currently may be gaps.

2 Fifth -- and this is the fifth of the points
3 I wish to make -- at the same time the Law
4 Society is well aware that it is only one of the
5 many organizations involved in the fight against
6 money laundering. It wants to ensure efforts
7 are as effective as possible, not just
8 individually and independently but as a
9 collective whole. The Law Society anticipated
10 rightly that the commission's process would
11 reveal further avenues for cooperation and
12 information sharing as well as gaps that may
13 exist. The information provided through the
14 process already has been helpful and indeed, as
15 reflected in the submissions of the governments
16 today, there's a very positive effort toward
17 collaboration that has been reinforced at least
18 through the commission and that continues to be
19 explored. And the Law Society looks forward to
20 the final report, shedding further light on
21 opportunities as well.

22 The Law Society itself continues to engage
23 actively with other entities that share a common
24 interest in AML work and welcomes suggestions on
25 how to build on those efforts. And many of its

1 directions taken to date.

2 3, the third recommendation, that all law
3 enforcement bodies, government agencies and
4 regulators with an AML mandate have an AML
5 liaison officer. That person would be the
6 primary point of contact for improved AML
7 collaboration and information sharing and
8 certainly not -- not that AML efforts would be
9 limited to that person, but it would be a
10 point of -- that person would be a point of
11 consistency in contact and ongoing
12 communication.

13 4, again, the concerns about lawyers be
14 referred to the Law Society for investigation.
15 5, that the Attorney General of BC request that
16 the appropriate federal minister amend the
17 *PCMLTFA* to include law societies as entities
18 permitted to request and receive financial
19 intelligence and other kinds of reports from
20 FINTRAC for use in their investigations and
21 strengthening their AML activities more
22 generally.

23 6, that the law enforcement agencies who are
24 involved in AML and the Law Society continue to
25 work together in educating AML staff and the

1 legal profession about money laundering
2 typologies observed in BC. As I've noted it's
3 important and the Law Society recognizes the
4 importance of keeping abreast of different
5 typologies as they may emerge and this would be
6 very valuable to it and to the members of the
7 Law Society as a whole.

8 7, as a specific and tangible point, that
9 the federal government create and maintain a
10 registry of politically exposed persons and
11 heads of international organizations that is
12 available to regulators and lawyers, financial
13 institutions and other professionals so that
14 they have a ready means of accessing that
15 information.

16 And 8, that government agencies in
17 possession of relevant data conduct a privacy
18 review and where appropriate facilitate access
19 to their shareable data in a searchable format
20 for law enforcement and regulators with an AML
21 mandate. We've heard through some of the
22 submissions this morning the importance of
23 information sharing, of course also coupled with
24 the importance of the BC Civil Liberties
25 Association has recognized careful adherence to

1 privacy mandates and the charter, but certainly
2 an increased information sharing ability would
3 be very helpful.

4 And in common with other participants, of
5 course, I close by thanking the commission and
6 commission staff and commission counsel for the
7 opportunity to participate in this inquiry and
8 the ability to be heard again today. And
9 subject to any questions, those are my closing
10 submissions for today.

11 THE COMMISSIONER: Thank you, Ms. Herbst.

12 MS. HERBST: Thank you.

13 THE COMMISSIONER: Yes, Mr. McGowan.

14 MR. MCGOWAN: Yes, Mr. Commissioner. We're at 1:15
15 now. In order to stay on track, we, in my
16 estimation, ought to complete at least one more
17 participant and possibly two today if they're
18 not going to be unduly long. I wonder if you
19 might want a short break before we move on to
20 the next. I wonder if that might be appropriate
21 before we move on to the next participant.

22 THE COMMISSIONER: I'm certainly happy to take a
23 break if that seems appropriate. So we'll take
24 10 minutes. And proceed from there. Thank you.

25 MR. MCGOWAN: Thank you.

1 THE REGISTRAR: This hearing is adjourned for a
2 10-minute recess until 1:27 p.m.

3 **(PROCEEDINGS ADJOURNED AT 1:17 P.M.)**

4 **(PROCEEDINGS RECONVENED AT 1:27 P.M.)**

5 THE REGISTRAR: Thank you for waiting. The hearing
6 is resumed. Mr. Commissioner.

7 THE COMMISSIONER: Thank you, Madam Registrar.

8 Yes, Mr. McGowan. I gather Mr. Pratte for
9 the Chartered Professional Accountants of Canada
10 is up next.

11 MR. MCGOWAN: That's correct.

12 THE COMMISSIONER: Mr. Pratte. I think you are
13 muted, Mr. Pratte. I'm sorry. You don't seem
14 to have unmuted yet.

15 MR. MCGOWAN: I'm still showing you as muted.

16 Mr. Pratte, sometimes the space bar will
17 unmute you. There we go.

18 **CLOSING SUBMISSIONS FOR THE CHARTERED PROFESSIONAL**
19 **ACCOUNTANTS OF CANADA BY MR. PRATTE:**

20 Thank you. Apologies, Mr. Commissioner.

21 Let me start by or restart by thanking you,
22 Mr. Commissioner and commission counsel, for
23 accommodating time constraints I had, typical of
24 your commission counsel's generosity and
25 accommodation, so thank you.

1 By way of instruction, let me just -- as
2 you pointed out, I'm counsel for the Chartered
3 Professional Accountants of Canada and we
4 represent the professional accountant profession
5 in the public interest. You know that we are
6 not a regulator, nor are we charged with
7 ensuring compliance with the AML regime that we
8 are here to discuss in particular today. What
9 the CPA Canada does do, however, is to provide
10 practical guidance to CPAs and firms and
11 ultimately in the public interest to assure as
12 best we can that the standards and the laws are
13 respected. And we do that, CPA Canada does that
14 by producing presentations and articles and CPD
15 offerings on anti-money laundering issues.

16 In addition CPA Canada is actively engaged
17 in addressing AML issues with the federal
18 government through policy submissions and
19 informal sessions and in its participation on
20 the public private Advisory Committee on Money
21 Laundering and Terrorist Financing, ACMLTF,
22 which involves, as you know, stakeholders and
23 dialogue on Canadian AML regime.

24 C PA Canada also engages in international
25 efforts to combat money laundering, including as

1 a member of the International Federation of
2 Accountants and through its participation in the
3 Financial Action Task Force, FATF, a private
4 sector consultative forum. I hope there's not
5 going to be a test of acronyms at the end of
6 this presentation, Mr. Commissioner, because
7 they seem to fly about all around.

8 CPA Canada recognizes the threats of money
9 laundering to Canada's reputation and the
10 economy and society and as a result and is
11 tested by its effort it has taken consistently a
12 very strong stand against it. Other than to
13 provide necessary context for the points I want
14 to make, and there are three main points I want
15 to make -- I don't intend to repeat what we
16 wrote to the commission in our written
17 submissions in July.

18 So there are three main points I want to
19 make very briefly, Mr. Commissioner. The first
20 focuses on the four main recommendations that
21 CPA Canada made in particular to develop more
22 and to focus on what we say are the gaps in the
23 regime particularly as it touches accountants
24 and where there are no gaps to be filled.

25 The second part is to respond in particular

1 to the claim by Transparency International that
2 accountants are enablers of money laundering and
3 in that connection as well to comment on
4 Canada's assertion that accountants are
5 so-called medium risk in this sector. And
6 thirdly, to respond to Canada's and Transparency
7 International' submission that there is a lack
8 of awareness of the money laundering and
9 terrorist financing obligations among the
10 accounting profession.

11 So let me turn to my first point. You'll
12 recall, Mr. Commissioner, that we made four main
13 recommendations in our written brief. And I'll
14 want to start with perhaps the one which we say
15 would have the greatest impact. And that is to
16 capture within the federal legislation and
17 regime all accountants. You'll recall,
18 Mr. Commissioner, that the evidence is that in
19 Canada there are about 220,000 members of CPA
20 Canada, so chartered accountants that are
21 regulated in the territories and the provinces.
22 But that is only one third of all persons who
23 call themselves accountants and who purportedly
24 would have knowledge of accountancy. The term
25 "accountant," as you know, is not a protected

1 term. It follows that there are twice as many
2 unregulated accountants who may be interacting
3 with the financial system or assisting therein
4 but contrary to chartered accountants, who are
5 under the federal legislation and are under the
6 supervision and discipline process of the
7 various provincial and territorial properties,
8 that two thirds are not. So that is a huge
9 hole, a self-evident gap in the entire system.
10 If you think of it, if it was rational in the
11 first instance to include chartered accountants
12 because of the knowledge that they may have and
13 the assistance that they may provide into the
14 regime, and assuming that those who call
15 themselves accountants have that knowledge or at
16 least some of that as well, a [indiscernible] by
17 leaving two thirds completely unregulated and
18 not subject to the federal regime means that
19 you've at best solved one third of the problem.

20 And more than that -- and I'll come to that
21 when I review the claim that accountants are
22 either ill-informed and/or participants in the
23 money laundering schemes. In fact you've heard
24 in my respective submission no evidence that
25 would suggest that this is so, nor any evidence

1 that changing or expanding the current scope of
2 obligations that befall on chartered accountants
3 would really enhance the effort and
4 effectiveness of the system.

5 So CPA Canada joins with CPABC in urging
6 the commission to include in its recommendations
7 that it should be expanded to include all
8 accountants or all those that trade effectively
9 on their title of accountants.

10 Now let me turn briefly just to give you
11 the full context, Mr. Commissioner, to the other
12 three recommendations that we made and that
13 touches on beneficial ownership verification and
14 transparency. Counsel for the province well
15 articulated the rationale for ensuring that
16 beneficial ownership can be ascertained. It's
17 self-evident, again, that schemes that are not
18 strong enough to be able to ascertain beneficial
19 ownership then as a result facilitate the work
20 of those who want to exploit the system and
21 engage in money laundering.

22 So let me make two points on that score.
23 First CPAs and accountant firms already have
24 obligations under the federal regime, the
25 anti-money laundering regime, to verify

1 beneficial ownership of clients in certain
2 circumstances that's detailed in paragraphs 48
3 to 52 of our written brief. For example, when
4 there might be large cash transactions.

5 The second point I want to make, though, is
6 to urge as a complement, an important complement
7 of that system, the implementation of a
8 beneficial ownership registry or registries for
9 provincially or federally incorporated
10 companies. CPA Canada believes that a tiered
11 model of beneficial ownership disclosure would
12 significantly strengthen the system and the
13 tiers would be something along the lines that
14 the greatest amount of information should be
15 provided to the competent authorities who are
16 directly engaged with fighting money laundering
17 with reduced access to the requisite information
18 to reporting entities and thirdly to the public.
19 As an overarching system, we submit that this
20 would accomplish a strengthening of the system
21 while at the same time balance the interest of
22 privacy that may be engaged.

23 The third point we made at paragraph 66 and
24 67 and 87 to 90 of our written submissions is to
25 implement a national whistleblowing framework,

1 again strengthening transparency and efficacy
2 akin to those that have been implemented in the
3 United States and the UK. This, for example,
4 would protect whistle-blowers, including
5 accountants from potential exposure to huge
6 civil liability as they try to discharge their
7 responsibilities to disclose activities that may
8 be -- involved money laundering. And fourthly,
9 again, a self-evident gap that needs to be
10 filled in our respectful submission, is to
11 expand information sharing capabilities between
12 those charged with enforcing the laws of money
13 laundering and those, for example, CPA Canada
14 but many other actors like the regulators who
15 could assist in those efforts.

16 So we say, Mr. Commissioner, that those
17 four measures, in fact singly but certainly
18 taken together, would fill obvious gaps and
19 would significantly enhance and improve the
20 effectiveness of the current regime. They are
21 much more likely to be effective, in our
22 respectful submission, than it would be to, for
23 example, change the current system which is
24 focused on activities of interaction with the
25 financial system to change it to include, as

1 Mr. McGuire recommended, for example, audit
2 functions or insolvency proceedings. There is
3 no evidence that that would work, in our
4 respectful submission.

5 Let me turn now to my second point. And
6 for that purpose, Mr. Commissioner, I will take
7 you back to a few of the points we made in our
8 written brief, but it's necessary to respond to
9 some of the serious allegations that have been
10 made. In its written submissions, Transparency
11 International made a number of assertions to the
12 effect that there's evidence that accountants
13 are employed by criminals to assist in money
14 laundering activities, and I refer to paragraphs
15 26, 28 and 30. For example, at paragraph 26 one
16 reads:

17 "The evidence before this commission
18 supports the conclusion that
19 professionals, especially accountants,
20 lawyers and bankers, are employed by
21 criminals to assist in the establishment
22 of shell corporations and other legal
23 entities to conceal income, contrive false
24 expenses and otherwise avoid taxes."

25 Paragraph 28:

1 "Unwitting or corrupted accountants,
2 lawyers and bankers are vectors of money
3 laundering in tax evasion schemes."

4 30, paragraph 30:

5 "The evidence given respecting the
6 accountant profession. The evidence given
7 respecting the accounting profession shows
8 some in the profession's indifference and
9 lack of knowledge verging on wilful
10 blindness to the potential that
11 accountants could be used to assist money
12 laundering activities. This should be of
13 significant concern to the public as
14 accountants are routinely involved in
15 assisting individuals and corporations to
16 minimize their tax exposure by a variety
17 of means."

18 My submission, Mr. Commissioner, is that such a
19 serious charge warrants undergirding it and
20 supporting it with serious evidence. There was
21 no evidence cited in support of those
22 paragraphs, but in its -- none, but in its reply
23 submissions Transparency International purports
24 to cite the transcript excerpts and do so at
25 paragraph 26.

1 Now, if you actually look at every single
2 one of those instances you will conclude that by
3 and large what is quoted doesn't involve
4 accountants at all. It may involve other
5 professionals. Or when there is a glib
6 reference to accountants, we can't tell whether
7 or not it's accountants in general, where they
8 are, whether they're regulated accountants or
9 not.

10 The one trend, the one source that is
11 referred to is of course Mr. McGuire that
12 actually suggests a more -- or purports to say
13 there is a more robust involvement by
14 accountants and this requires to deconstruct
15 that or analyze that that I review briefly some
16 of the evidence that Mr. McGuire purported to
17 advance when you heard him very early in January
18 of this year.

19 There's no doubt Mr. McGuire makes the
20 assumption that accountants must be involved
21 because some people are moving money or engaging
22 in money laundering and he presumes that that
23 requires the assistance of accountants. We
24 address this in detail in our brief at
25 paragraph 71 and 75, but in summary, let me

1 respond in this fashion. Mr. McGuire admitted
2 that when he uses the term "accountant" in his
3 report he does not distinguish between chartered
4 professional accountants and accountants more
5 broadly. That's at page 109 and 110 of the
6 transcript. He also acknowledged that those who
7 call themselves accountants but are not
8 chartered accountants have the knowledge needed
9 to affect the kinds of transactions that he
10 refers to. Secondly, none of the reports that
11 he cites to support the proposition that
12 professional accountants are involved in money
13 laundering. The international studies do not
14 suggest Canadian professional accountants are
15 involved at all. He conceded that at page 114
16 of his transcript. In fact there is no actual
17 evidence of professional accountant, chartered
18 regulated accountants involvement in money
19 laundering in Canada. What Mr. McGuire was
20 driven to say is that he referred to anecdotal
21 instances of accountant involvement. But when
22 we went through that with him, at page 129 of
23 his transcript, he agreed that he could find
24 only one instance, one instance of a chartered
25 professional accountant who may have engaged in

1 criminal activity. That person was ultimately
2 dismissed from the profession. He had to agree,
3 then, in the end that there was no systematic
4 problem involving professional accountants and I
5 would suspect -- I would submit respectfully
6 that if we're talking about one case, there's no
7 problem, period.

8 There is therefore in my respectful
9 submission no gap in terms of the money
10 laundering regime as it exists for CPAs and you
11 should address instead the obvious gaps that
12 I've mentioned.

13 Before I turn to my first point -- my third
14 point, Mr. Commissioner, I'd like to mention as
15 well the Government of Canada's claim that
16 accountants are so-called medium risk. That's
17 made at paragraph 55 of their submissions, and
18 its reliance on the assessment of inherent risk
19 of money laundering and terrorist financing in
20 Canada assessment. That's exhibit 396. And
21 you'll recall page 32 that there's a table which
22 purports to rate the vulnerability of various
23 professions and groups, table 3.

24 If you look at that table -- again,
25 Commissioner, it's exhibit 396, page 32,

1 table 3 -- there are 21 other entities that are
2 listed between very high vulnerability, high
3 vulnerability, medium and low. The vast
4 majority are rated as very high or high, but
5 then accountants not distinguished between
6 regulated and unregulated accountants, and then
7 the lowest is insurance, life insurance there,
8 professionals.

9 Now, again, Mr. Commissioner, if you -- and
10 the actual evidence for that assessment is not
11 really provided, but, again, by not
12 distinguishing between regulated and unregulated
13 accountants, there is a lack of support for the
14 contention that public -- or chartered
15 accountants would somehow be high risk -- or
16 medium risk, rather, and we'll see in fact that
17 there's no reason to believe that they are at
18 all.

19 The only thing in the report that actually
20 concerns accountants also in terms of tax is at
21 page 40 of the report. Again, that's
22 exhibit 396. And what we read is this:

23 "The client profile of accountants would
24 include high net worth clients,
25 politically-exposed persons, PEPs, and

1 vulnerable businesses. It's believed that
2 accountants have little exposure to
3 high-risk jurisdictions given that they're
4 mostly domestically focused. Both
5 professions mainly interact directly and
6 in face-to-face setting with their
7 clients, minimizing anonymity."

8 If you just read that, Mr. Commissioner, it's
9 difficult to see on what basis one could
10 conclude that they are even medium risk. The
11 document actually doesn't suggest that they are
12 involved directly in any money laundering but
13 simply that they might be exposed, but there is
14 no evidence, no evidence for that assessment.
15 And as I said, given that this made without any
16 distinction between the regulated part of the
17 profession and the two thirds that aren't, I
18 respectfully submit that this single piece of
19 quote, unquote evidence to suggest that
20 chartered professional accountants would be a
21 medium risk is simply not sustainable.

22 Let me turn now and conclude with my third
23 submission, Mr. Commissioner. And that is to
24 deal with the allegation that the level of
25 awareness, the current level of awareness in

1 2021 of professional accountants, chartered
2 professional accountants, is concerning. That's
3 a claim, again, that's made by Transparency
4 International at paragraph 30. And it's also a
5 claim that's made at paragraph 140 of Canada's
6 written closing submissions.

7 Now, the evidence, quote, unquote, for this
8 claim is one thing, which is the 2015 meeting
9 that took place between CPA Canada and FINTRAC
10 following the report that was ultimately
11 published of the mutual evaluation report in
12 2016, the FATF MER Report, and this was alluded
13 to earlier today by Canada's counsel where,
14 after conducting some 44 examination of the
15 accounting sector, FINTRAC concluded that there
16 was insufficient awareness by the accounting
17 profession, the chartered accounting profession,
18 of their responsibilities.

19 I point out, Mr. Commissioner, that this
20 meeting in which FINTRAC shared its concerns and
21 some of the evidence for that with CPA Canada
22 was brought about at CPA Canada's instance.
23 Following that -- and you'll recall we made that
24 point in our submissions, written submissions --
25 CPA Canada immediately issued an alert and also

1 published its guide to assist the profession to
2 meet their obligations. Following that we
3 learned that FINTRAC between 2016 and 2020
4 conducted seven examinations of the accountants.
5 Given that is described by Canada, this
6 selection is a risk-based assessment, that is to
7 say they choose the people that should be
8 investigated based on some risk assessment of
9 that group, seven in five years out of what
10 we're told is a large, very large number of
11 examinations, 399 in 2019 to 2020, it seems like
12 not a great indication of any risk let alone
13 medium risk. In fact, in 2019 -- in the year
14 2019 to 2020 FINTRAC conducted one examination
15 out of 399 of the accountant profession. So
16 just on that, in my respectful submission, given
17 that the selection is risk-based, one can't
18 conclude that there's a big risk of the
19 accounting profession.

20 But I point out moreover, Mr. Commissioner,
21 that after that meeting of 2015, FINTRAC never
22 contacted CPA Canada and say, look, red flag;
23 the problem we brought to your notice in 2015
24 has not been addressed. Nothing. Radio
25 silence. In its submissions, Canada seems to

1 suggest that they couldn't do that because there
2 was no memorandum of understanding or that maybe
3 there was some legislative permission or leeway
4 that they required that was not there. Well,
5 two problems for that, Mr. Commissioner. The
6 first is why were they able to share at least
7 some useful information in 2015 that was a
8 concern to them, and if there was anything of
9 concern to them, why could they not do that in
10 2016, '17, '18, '20 and '21, and if they needed
11 a memorandum of understanding to make sure that
12 the information sharing was proper and
13 appropriate, why didn't they call CPA Canada and
14 say, would you please consider this MOU? None
15 of that.

16 So based on the evidence, in my respectful
17 submission, that is before you, I respectfully
18 submit, Mr. Commissioner, that you cannot
19 conclude that there is any evidence after 2016
20 that whatever issue was identified in 2015 had
21 not been remedied. And its efforts -- and we
22 deal with that in our submissions,
23 Mr. Commissioner, at paragraphs 19 to 26. The
24 efforts of education, of assistance and
25 providing practical guidance continued and

1 continued to this day to make sure that the
2 profession and the professionals that CPA Canada
3 tries to assist are as aware and have practical
4 guidance to discharge their obligations under
5 the federal regime as apparently they do.
6 Because there's no evidence that they don't.

7 But, for example, as recently as June 2021,
8 CPA Canada launched a new course entitled
9 Anti-Money Laundering and Ethics: A Canadian
10 and Global Perspective. It published a feature
11 article in the professions magazine called *Pivot*
12 on the subject and it reorganized its website to
13 consolidate all of the AML resources for CPAs on
14 a new webpage.

15 I concede, Mr. Commissioner, before
16 concluding that more can always be done, but
17 there's certainly no evidence before you that
18 not enough was done to address the concern that
19 FINTRAC communicated six years ago. So to
20 conclude, CPA Canada remains committed to the
21 fight of defeating money laundering and it wants
22 to be part of the solution, but we say that
23 refurbishing the currently sculpted system that
24 exists federally of focusing on interactions
25 with the financial system is not the right way

1 to approach it. It's really a solution in
2 search of the problem. The problem is not
3 there. The problem is in the gaps, some of
4 which I've tried to identify, the most important
5 of which is probably the leaving out of account
6 of the unregulated two thirds of those who call
7 themselves accountants.

8 If evidence is to be the guide for your
9 recommendations, which everyone appears to
10 support, Mr. Commissioner, then I urge the
11 commission to conclude that to adopt those
12 solutions that have a clear rationale and are
13 based in evidence is what you should do and
14 those would include the four suggestions we made
15 before you, but to reject those which have no
16 basis on the evidence whatsoever, and I've dealt
17 with that. Subject to your questions,
18 Mr. Commissioner, those are my submissions.

19 THE COMMISSIONER: Thank you, Mr. Pratte.

20 Yes, Mr. McGowan, I think you had suggested
21 that -- to keep ourselves on track to finish
22 within the three days that we have scheduled it
23 might be useful to engage with the Chartered
24 Professional Accountants of British Columbia
25 this afternoon.

1 MR. MCGOWAN: Yes, Mr. Commissioner. And I
2 understand Mr. Soltan is prepared to proceed.

3 THE COMMISSIONER: That's helpful. Thank you,
4 Mr. Soltan.

5 **CLOSING SUBMISSIONS FOR THE CHARTERED PROFESSIONAL**
6 **ACCOUNTANTS OF BRITISH COLUMBIA BY MR. SOLTAN:**

7 Thank you, Mr. Commissioner, and good
8 afternoon. Appearing with me is Mr. Herbert of
9 my firm, and we are counsel for the Chartered
10 Professional Accountants of British Columbia.

11 THE COMMISSIONER: Thank you.

12 MR. SOLTAN: Who we will refer to as CPABC. I intend
13 to review several key points in CPABC's written
14 closing submissions. And my colleague
15 Mr. Herbert will make some submissions in
16 response to Canada's reply and the closing and
17 reply submissions of Transparency International.

18 I would start, Mr. Commissioner, by
19 providing a brief overview of my submissions and
20 they are threefold. First there is no evidence
21 before the commission of any problem of
22 chartered professional accountants, who I will
23 refer to as CPAs, or their firms being engaged
24 in or enabling money laundering. Secondly, CPAs
25 and their firms engaged in public practice are

1 subject both to CPABC's rigorous regulatory
2 oversight under the *BC Chartered Professional*
3 *Accountants Act* as well as Canada's AML regime.
4 And third -- and here I join with Mr. Pratte --
5 if any regulatory measures are to be recommended
6 to address the risk of accountants being
7 involved in money laundering, they should
8 address the omission of unregulated accountants
9 from Canada's AML regime. And I just pause here
10 to note that CPABC is supportive of the
11 submissions that Mr. Pratte made on behalf of
12 CPA Canada.

13 I turn now, Mr. Commissioner, to review
14 several key points. First, as I've said
15 already, there is in my respectful submission no
16 evidence before the commission of any systemic
17 or any problem of CPAs or their firms being
18 engaged in or enabling money laundering. Unlike
19 unregulated accountants who are not CPAs and
20 lawyers, for example, CPAs and their firms are
21 governed by Canada's AML regime. Also, unlike
22 unregulated accountants, CPAs in British
23 Columbia are subject to CPABC's rigorous ethical
24 and professional standards and its regulatory
25 oversight under the *Chartered Professional*

1 *Accountants Act.*

2 I'd like to turn now to deal with the
3 assertion that accountants are somehow enablers,
4 facilitators or gatekeepers. In my submission
5 the evidence before the commission demonstrates
6 that accountants are different from certain
7 other professionals who may be labelled as
8 enablers, facilitators or gatekeepers. And I
9 say this for three main reasons. First, unlike
10 notaries or lawyers, for example, the majority
11 of people working in the accounting sector in
12 BC, approximately two thirds are not registered
13 or licensed by any regulatory body but rather
14 are unregulated accountants who are not subject
15 to any professional regulation or oversight.

16 Second, there are significant limitations
17 on the services that CPAs in BC may provide.
18 For example, they are prohibited by the *Legal*
19 *Profession Act* of British Columbia from
20 providing legal advice or services constituting
21 the practice of law which would include the
22 incorporation of companies, establishing trusts
23 and preparing and maintaining corporate records.

24 As noted by Michelle Wood-Tweel of CPA
25 Canada in her evidence, these are the services

1 that involve the most serious risk of money
2 laundering in the UK accounting sector. I also
3 note that CPAs are restricted by the *Real Estate*
4 *Services Act* of British Columbia from providing
5 real estate services subject to limited
6 exceptions.

7 Thirdly, the evidence before the commission
8 also demonstrates that it is uncommon for CPAs
9 in public practice in BC to operate trust
10 accounts. Unlike lawyers in BC, trust accounts
11 are not a common feature of professional
12 accounting practices.

13 Another point I'd like to emphasize,
14 Mr. Commissioner, is that CPABC has not received
15 any communication previously from FINTRAC
16 regarding any compliance concern involving any
17 CPA or firm that's regulated by CPABC. And by
18 that I mean compliance with Canada's AML regime.
19 If that kind of information were received from
20 either FINTRAC or any other source, including
21 anonymous sources, regarding a member of CPABC
22 being engaged in money laundering or any other
23 illegal activity for that matter, it would be
24 addressed in CPABC's investigation and
25 discipline process and it would be treated very

1 seriously.

2 Mr. Tanaka of CPABC noted in his evidence,
3 the risk of CPAs in BC being vulnerable to
4 becoming involved in money laundering is "very
5 low." And CPABC has not had any case to date
6 involving a CPA or firm being involved in money
7 laundering. Further, Mr. McGuire, an expert
8 called by commission counsel, conceded in his
9 testimony there is no basis to conclude that
10 there is a systemic problem of CPAs in BC being
11 involved in money laundering. I submit,
12 however, that the risk for unregulated
13 accountants who are not CPAs is much greater as
14 they are not subject to CPABC's regulatory
15 oversight and they've been omitted from Canada's
16 AML regime.

17 In the course of the proceedings you heard
18 evidence that the protection of the public
19 interest is at the core of CPABC's regulatory
20 mandate, and in that regard CPABC strongly
21 endorses the importance of CPAs in BC meeting
22 their obligations under Canada's AML regime. In
23 conjunction with CPA Canada, CPABC supports CPAs
24 in BC in meeting their obligations under the
25 regime through continuing professional

1 development, courses, regulatory updates,
2 advisory services and other resources. And this
3 is so even though CPABC does not have a specific
4 AML mandate under its governing legislation, the
5 CPA Act. I submit that this complements the
6 educational initiatives that have been taken by
7 FINTRAC in the accounting sector as described by
8 my friend, Ms. Shelley, co-counsel for Canada.

9 I submit that if any additional regulatory
10 measures should be recommended to address the
11 risk of accountants becoming involved in money
12 laundering in BC, they should address the
13 obvious omission of unregulated accountants from
14 Canada's AML regime. In this regard, CPABC
15 would be supportive of Mr. McGuire's
16 recommendation to establish a registry of
17 unregulated accountants who perform triggering
18 activities under Canada's AML regime as well as
19 background screening of owners, managers and key
20 employees. CPABC would also welcome
21 opportunities to put on educational programs
22 jointly with FINTRAC for its members and firms.

23 Mr. Commissioner, I'm now going to turn it
24 over to my colleague, Mr. Herbert.

25 THE COMMISSIONER: Thank you, Mr. Soltan.

1 Mr. Herbert.

2 MR. HERBERT: Yes, thank you very much,

3 Mr. Commissioner.

4 **CLOSING SUBMISSIONS FOR CHARTERED PROFESSIONAL**

5 **ACCOUNTANTS OF BRITISH COLUMBIA BY MR. HERBERT:**

6 As Mr. Soltan noted in his introduction, I
7 intend to provide brief comments in reply to the
8 written submissions of other participants,
9 particularly in reply to Canada's comments in
10 part D of its reply submissions which responded
11 to the submissions of CPABC and CPA Canada, and
12 a brief reply to Transparency International
13 Coalition's comments about the accounting sector
14 in its initial closing submissions and its reply
15 submissions to supplement the submissions just
16 made by Mr. Pratte on that point.

17 At the outset I also wish to simply note
18 it's noteworthy that in all of the extensive
19 written and oral submissions that have been made
20 by the province to the commission the province
21 has raised no concern at all about the
22 accounting sector.

23 Starting then with my comments in response
24 to Canada. In Canada's reply submissions of
25 July 30th at paragraph 54, Canada references a

1 concern that CPABC has raised in its written
2 submissions to the commission and which
3 Mr. Soltan also just noted in his oral
4 submissions, the concern that CPABC has never
5 received any communications from FINTRAC about
6 Suspicious Transaction Reports or compliance
7 concerns relating to particular CPAs or firms in
8 British Columbia.

9 At paragraph 56 of its reply, Canada tries
10 to minimize the significance of the absence of
11 any such communications from FINTRAC, describing
12 this as being the result of statutory
13 limitations on information sharing under the
14 *PCMLTFA*. In response to Canada's comments,
15 CPABC wishes to emphasize that the *PCMLTFA* would
16 not prevent FINTRAC from disclosing
17 non-identifiable information to CPABC about
18 these kinds of concerns. Despite the absence of
19 such a limitation, no such non-identifiable
20 information has ever been shared with CPABC.

21 Canada goes on to note at paragraph 56 of
22 its reply that CPABC is not currently on the
23 list of disclosure recipients in section 55(3)
24 of the *PCMLTFA*. We note in response to this,
25 however, that that omission is outside of

1 CPABC's control but could very easily be
2 addressed by parliament. For example,
3 provincial securities regulators are
4 specifically included as disclosure recipients
5 in section 55(3)(g). It would be entirely open
6 to parliament to extend section 55(3) to
7 similarly empower FINTRAC to disclose
8 information to provincial professional
9 regulatory bodies such as CPABC if the
10 information may be relevant to investigating or
11 prosecuting a breach of ethical rules or
12 professional standards. CPABC would very much
13 welcome such an amendment.

14 We also emphasize that CPABC would be very
15 open to entering into an agreement or an MOU
16 with FINTRAC to allow for the sharing of
17 information under section 65(2) of the *PCMLTFA*
18 along the lines of FINTRAC's March 2019 MOU with
19 the former Real Estate Council of BC, which has
20 now been integrated with the BC Financial
21 Services Authority, that MOU which was
22 referenced by Ms. Gardner in her submissions
23 earlier.

24 We note that this kind of information
25 sharing agreement would be consistent with the

1 collaborative approach to information sharing
2 that's been advocated for by the province and
3 was referenced in Ms. Rajotte's submissions. I
4 must add the caveat, however, that in the case
5 of CPABC such an agreement would of course have
6 to respect CPABC's confidentiality obligations
7 under the *Chartered Professional Accountants*
8 *Act*.

9 At paragraph 57 of its reply Canada also
10 takes issue with CPABC's evaluation of the low
11 risk relating to CPAs and their firms. And with
12 CPABC's interpretation of the guidance document
13 released by the Financial Action Task Force, or
14 FATF. In particular, Canada makes the assertion
15 that CPABC's submission that CPAs and their
16 firms are low risk is based on a
17 misunderstanding of the FATF report.

18 At the same time, however, Canada
19 specifically acknowledges that the FATF report
20 made no assessment of BC accountants, either
21 regulated or unregulated, or the risks
22 associated with the services that accountants
23 provide in British Columbia. This
24 acknowledgement is consistent with the
25 underlying point that CPABC is making that a

1 great amount of the analysis in the FATF report
2 is based on risks arising from services that
3 CPAs in British Columbia do not actually provide
4 or very few of them. Whether or not the FATF
5 report was intended to be a comparative
6 document, some of the most significant risks
7 that were identified in the FATF report simply
8 do not apply to CPAs and their firms in British
9 Columbia.

10 Mr. Commissioner, I'll continue with my
11 brief comments in response to the Transparency
12 International Coalition. And at the outset, I
13 emphasize that the coalition was not granted
14 standing to make any submissions regarding the
15 professional services sector. We adopt the Law
16 Society's submissions on this point in
17 paragraphs 8 and 9 of the Law Society's
18 July 30th responding submissions, and as such,
19 we ask the Commissioner to disregard the
20 coalition's submissions as they relate to the
21 professional services sector, including
22 accountants.

23 If the Commissioner still intends to
24 consider the coalition's submission, despite its
25 lack of standing, then we must stress the same

1 point made by Mr. Pratte, that the coalition in
2 its closing submissions fails to cite any
3 evidence whatsoever to support the bare
4 assertion that it's made that accountants are
5 professional enablers of money laundering.
6 There's no evidence cited at all.

7 And the coalition also completely ignores
8 the critically important distinction which both
9 Mr. Pratte and Mr. Soltan have elaborated on
10 between chartered professional accountants who
11 are subject to regulatory oversight both by
12 CPABC and by FINTRAC as opposed to unregulated
13 accountants who are not CPAs who may provide
14 accounting services but are not presently
15 subject to any regulatory oversight with respect
16 to AML or otherwise.

17 Now, in the coalition's reply submission at
18 footnote 6, it did cite various transcript
19 references purportedly in support of its
20 assertion that the evidence before the
21 commission supports the notion that
22 professionals, i.e. bankers, accountants and
23 lawyers, pose a significant risk of
24 facilitating, either willing or unwillingly,
25 money laundering activities and are in fact

1 known to be facilitating money laundering.

2 However, apart from Mr. McGuire's testimony,
3 when you review all of those transcript
4 references it reveals that none of those cited
5 references actually appear to deal with CPAs
6 specifically. A great many of the citations are
7 focused on lawyers and the others speak very
8 broadly to the role of professional enablers,
9 gatekeepers and without -- and facilitators
10 without any particular focus on -- or evidence
11 relating to chartered professional accountants
12 or to accountants at all.

13 With respect to Mr. McGuire's evidence we
14 also emphasize that in Mr. McGuire's
15 December 31st report to the commission, as
16 Mr. Pratte noted, Mr. McGuire was only able to
17 provide one isolated example post-unification of
18 the CPA profession of a Canadian CPA being
19 involved in money laundering, the Neilson case,
20 who's registration with CPA Alberta was
21 cancelled in 2016.

22 As my colleague Mr. Soltan previously
23 outlined, we again emphasize that Mr. McGuire
24 also conceded in his oral testimony that there
25 was no basis to conclude that there is a

1 systemic problem of CPAs being involved in money
2 laundering in British Columbia.

3 Mr. Commissioner, in closing, we stress the
4 following four key takeaway points arising from
5 CPABC's evidence and submissions. First, CPAs
6 and their firms simply are not the problem when
7 it comes to money laundering as there's no
8 evidence before the commission of a systemic or
9 any problem of CPAs or their firms being engaged
10 in or enabling money laundering. Second, CPAs
11 and their firms in BC are already subject to
12 strong regulatory oversight, both by CPABC under
13 the provincial framework of the *Chartered*
14 *Professional Accountant Act* and by FINTRAC under
15 Canada's AML regime.

16 Thirdly, the one significant gap that's
17 been noted both by Mr. Soltan and by Mr. Pratte
18 in Canada's AML regime as it relates to the
19 accounting sector is with respect to unregulated
20 accountants. FINTRAC, not CPABC, of course, is
21 the appropriate vehicle to address that gap in
22 AML oversight and CPABC fully supports the
23 extension of Canada's AML regime to encompass
24 unregulated accountants when they are engaged in
25 triggering activities.

1 And fourth and finally, we emphasize that
2 CPABC remains firmly committed to supporting
3 efforts to combat money laundering and to
4 ensuring that its own members and firms
5 understand their obligations under Canada's AML
6 regime.

7 Mr. Commissioner, I wish to thank -- we
8 wish to thank you and commission counsel and
9 staff for the opportunity to participate today
10 and subject to any questions, those are our
11 submissions.

12 THE COMMISSIONER: Thank you, Mr. Herbert and
13 Mr. Soltan. Mr. McGowan, I think we have come
14 to a point where it's appropriate to break for
15 the day.

16 MR. MCGOWAN: Yes, Mr. Commissioner. Monday the 18th
17 at 9:30 a.m.

18 THE COMMISSIONER: Thank you. We'll adjourn until
19 then.

20 THE REGISTRAR: The hearing is now adjourned until
21 October 18th, 2021, at 9:30 a.m. Thank you.

22 **(PROCEEDINGS ADJOURNED AT 2:17 P.M. TO OCTOBER 18, 2021)**

23

24

25