

**PROCEEDINGS AT HEARING
OF
OCTOBER 18, 2021**

COMMISSIONER AUSTIN F. CULLEN

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1

October 18, 2021

2

(Via Videoconference)

3

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

4

THE REGISTRAR: Good morning. The hearing is

5

resumed. Mr. Commissioner.

6

THE COMMISSIONER: Thank you, Madam Registrar.

7

Yes, Mr. McGowan.

8

MR. MCGOWAN: Yes. Good morning, Mr. Commissioner.

9

Next in the line-up is Mr. Skwarok for the Great

10

Canadian Gaming Corporation.

11

THE COMMISSIONER: Thank you. Mr. Skwarok.

12

CLOSING SUBMISSIONS FOR GREAT CANADIAN GAMING CORPORATION

13

BY MR. SKWAROK:

14

Thank you, Mr. Commissioner. By way of

15

introduction, Great Canadian's anti-money

16

laundering responsibility is to report large and

17

suspicious transactions. The company was not

18

expected by anyone to investigate them, nor was

19

it the company's role to refuse large or

20

suspicious transactions unless directed to do so

21

by either BCLC or GPEB. It was the

22

responsibility of those organizations as well as

23

FINTRAC and the RCMP and various other --

24

THE COMMISSIONER: Mr. Skwarok, I'm sorry to

25

interrupt you. We're having some difficulty

1 with your sound. I'm not sure if it can be
2 easily rectified or if we need to stand down
3 briefly.

4 MR. SKWAROK: Let me ... How is this?

5 MR. MCGOWAN: Mr. Skwarok, it appears to me like the
6 noise of the microphone rubbing against your
7 face is being picked up by our feed.

8 MR. SKWAROK: Okay. Thank you.

9 THE COMMISSIONER: That seems better. Thank you.

10 MR. SKWAROK: Thank you.

11 Great Canadian appropriately relied on these
12 bodies, that is the RCMP, FINTRAC and other
13 integrated police forces, to provide direction
14 and conduct appropriate investigations.

15 The company generally fulfilled its
16 obligations very well, and any mistakes that may
17 have occurred were the result simply of human
18 error rather than the company turning a blind
19 eye to AML policies or procedures. As Dr. Peter
20 German found, Great Canadian, like all service
21 providers, is subject to a "dizzying array" of
22 regulations and policies. Robert Kroeker
23 testified that during his time at Great Canadian
24 he could not recall a month where Great Canadian
25 was not under audit by either FINTRAC, BCLC,

1 private sector audit firms or GPEB. These
2 audits generally confirmed that Great Canadian
3 met or exceeded its AML obligations.

4 This isn't to say that Great Canadian did
5 not make some mistakes in its reporting, but to
6 the extent that these audits did identify
7 errors, they were quickly corrected. There's
8 never been a significant enough problem with
9 reporting mistakes to cause BCLC or GPEB to
10 impose conditions on Great Canadian's operations
11 of its casinos or on its registration as a
12 gaming service provider.

13 Great Canadian not only complied with the
14 AML directions it received from BCLC and GPEB,
15 but it took the initiative to encourage
16 investigations of suspicious transactions. The
17 company had and continues to have excellent
18 compliance staff and other professionals who
19 take their AML reporting obligations extremely
20 seriously. The evidence has shown that the
21 company acted above and beyond its reporting
22 obligations in a number of ways to proactively
23 address potential money laundering issues.
24 Compliance was and is always placed ahead of
25 revenue.

1 I'm moving briefly to the regulatory
2 regime. BCLC implements very detailed
3 standards, policies and procedures that service
4 providers must follow. These rules include
5 policies relating to anti-money laundering.
6 BCLC is responsible for oversight of service
7 providers to ensure they complied with all
8 applicable rules. It also conducts numerous
9 audits to ensure compliance.

10 I'm now at approximately paragraph 11 of my
11 closing. Numerous BCLC investigators and
12 members of BCLC management testified about
13 having a very good, strong working relationship
14 with Great Canadian. To the extent that there
15 may have been initial concerns when BCLC
16 investigators first were stationed on site at
17 River Rock, that attitude quickly changed. The
18 evidence presented in this inquiry confirmed
19 that whenever BCLC requested information, Great
20 Canadian staff and management provided the
21 assistance requested in a prompt and efficient
22 manner.

23 It has been suggested that Great Canadian
24 at one time discouraged patron interviews by
25 BCLC, thereby hindering its investigations.

1 That suggestion is contrary to the majority of
2 the evidence. A number of witnesses testified
3 about a meeting called by BCLC's Terry Towns in
4 2012 with several BCLC investigators. Sir, this
5 is not in my written closing. Mr. Towns
6 apparently told them not to speak with patrons
7 at River Rock. The meeting followed complaints
8 from Great Canadian about BCLC investigators
9 embarrassing patrons by interviewing them on the
10 floor at the casino in full view of the patrons'
11 associates.

12 Great Canadian's concerns about BCLC
13 interviewing patrons had nothing to do with the
14 company trying to impede BCLC investigations.
15 Messrs. Desmarais, Tottenham, Friesen and
16 Hiller, all from BCLC, acknowledged that Great
17 Canadian's concern was only about how
18 investigators interacted with patrons. This led
19 BCLC and Great Canadian to develop a protocol
20 where BCLC investigators would tell Great
21 Canadian personnel what they wanted to know and
22 Great Canadian would then either attempt to
23 obtain the information from the patrons or
24 arrange for BCLC investigators to meet with the
25 patrons in a quiet, private setting. If Great

1 Canadian did not get the answer that BCLC
2 wanted, then it was agreed that BCLC
3 investigators would in fact meet with the
4 patrons themselves.

5 Daryl Tottenham described this as a win-win
6 situation, where patrons save face by not being
7 questioned in public, and Great Canadian
8 employees were often more capable of getting
9 information than BCLC investigators because of
10 their closer relationship.

11 It has also been suggested that Great
12 Canadian discouraged barrings of individuals by
13 BCLC. Great Canadian doesn't dispute that on a
14 number of occasions it sought further
15 information or clarification of the reasons why
16 BCLC made decisions to banish sanction patrons.
17 In some instances the company disagreed with the
18 decisions made by BCLC and provided additional
19 information that it believed might persuade BCLC
20 to take a different approach. And sometimes
21 BCLC did so.

22 Messrs. Hiller, Lightbody and Tottenham on
23 behalf of BCLC all said that these types of
24 discussions with BCLC on appropriate sanctions
25 were mutually beneficial and did not amount to

1 interference with BCLC.

2 Briefly turning to GPEB. That organization
3 had and has the power to direct Great Canadian
4 to do whatever it considers necessary to protect
5 the integrity of gaming and has significant
6 discretion to determine what the phrase
7 "integrity of gaming" encompasses. Paragraph 16
8 of my closing. If a service provider's conduct
9 is contrary to the integrity of gaming, GPEB has
10 the authority to issue penalties forthwith.
11 This could include imposing conditions on its
12 operations or on registration. No such
13 restrictions or penalties were ever imposed by
14 GPEB on Great Canadian.

15 GPEB investigators and management testified
16 that Great Canadian has been variably
17 cooperative in its review of incidents and
18 requests for information and, as with the BCLC,
19 they have had a very good working relationship
20 with Great Canadian.

21 Moving on to law enforcement. Great
22 Canadian has consistently received positive
23 feedback from the Richmond RCMP regarding their
24 efforts to assist them. On two occasions the
25 efforts of the surveillance team were recognized

1 with awards of exemplary assistance. In
2 addition, in April 2014, Inspector Hall sent an
3 email to Great Canadian that said:

4 "We do not have a concern about money
5 laundering at the River Rock."

6 Hall portrayed himself as a money laundering
7 expert, who had worked on the IPOC team for over
8 a decade. These affirmations from the RCMP
9 confirmed Great Canadian's assessment that they
10 were doing everything they needed to do
11 regarding AML. The commission did hear evidence
12 from one law enforcement officer, that when
13 River Rock was first opened, the company
14 expressed concerns with uniformed officers
15 patrolling inside the premises. At the time
16 Great Canadian felt their presence could make
17 patrons uncomfortable or nervous. However,
18 Great Canadian's apprehension in this regard
19 soon changed, and the company came to the view
20 that a uniformed police presence in the casino
21 was a positive thing to enhance public safety.

22 I'd like to move on briefly to a discussion
23 of Great Canadian's compliance personnel. The
24 evidence is that senior management and other
25 professions at Great Canadian who had

1 responsibility for compliance were top-tiered
2 experts in compliance generally and in
3 anti-money laundering procedures specifically.
4 These individuals since 2012 have included
5 Messrs. Kroeker, Ennis and Doyle. Every witness
6 who testified about these individuals
7 acknowledged their uncompromising integrity,
8 knowledge, experience and devotion to
9 compliance. Mr. Kroeker and Ennis testified
10 they never directed any staff members at Great
11 Canadian to hide or cover up any breaches of AML
12 rules by anyone, including VIPs. They said that
13 management never were refused any of their
14 requests for funds or resources to operate their
15 department in as professional a manner as
16 possible.

17 Similarly, Mr. Doyle, who was the number
18 two person at Great Canadian, testified that the
19 company's board of directors made it clear that
20 it was Mr. Doyle's responsibility to hire the
21 most qualified people and to make effective
22 compliance a top priority for the company. As
23 he testified, if compliance is not conducted
24 rigorously, the company would run afoul of the
25 rules and regulations and be forced to cease

1 operations. None of these individuals placed
2 revenue ahead of compliance.

3 I'd like to touch on the reporting
4 obligations of Great Canadian. The company's
5 duties have been restricted to filing reports
6 with BCLC and GPEB. This is around
7 paragraph 34, sir. Amongst other things, Great
8 Canadian files Large Cash Transaction Reports
9 and Unusual Financial Transaction Reports with
10 BCLC. Its -- AML obligations were to follow the
11 reporting directives and policies of BCLC and
12 GPEB. In the context of AML procedures, the
13 company was required to do what it was told to
14 do, which was only to report. It is a policy
15 taker, not a policy maker.

16 BCLC and GPEB witnesses were unequivocal
17 that it was not Great Canadian's obligation or
18 responsibility to ascertain whether or not its
19 casinos were vehicles to launder money or
20 whether cash buy-ins were made with the proceeds
21 of -- the company has neither the expertise nor
22 the resources to investigate potential money
23 laundering transactions. It was the job of some
24 or all of the police, GPEB and BCLC to
25 investigate potential money laundering.

1 Nor could Great Canadian have investigated
2 potentially illegal transactions, even if it
3 wanted to. Many witnesses from BCLC, GPEB and
4 law enforcement testified that Great Canadian
5 was not invited to the numerous meetings about
6 potential money laundering that they engaged in.
7 They acknowledged the company was not privy to
8 investigative information that had been gathered
9 about the origins of large cash transactions.
10 It was reasonable for the company to await
11 advice from BCLC, GPEB and law enforcement about
12 what should be done with large cash buy-ins.

13 Moving to approximately paragraph 42 of the
14 closing, dealing with the quality of reporting
15 done by Great Canadian. All witnesses who
16 testified, whether they be from GPEB, BCLC or
17 Dr. German, noted that Great Canadian generally
18 did a very good job at preparing and filing
19 reports. This was borne out in various audits
20 conducted by BCLC and GPEB. There were isolated
21 instances where reports were not properly
22 completed. This isn't surprising, sir, given
23 the extraordinarily large number of reports
24 filed by Great Canadian. The affidavit of
25 Mr. Doyle shows that at River Rock alone between

1 2010 and 2019, Great Canadian filed over 183,000
2 large cash transactions, 10,000 Unusual
3 Financial Transaction Reports and 30,000
4 Section 86 Reports. The vast majority of these
5 were properly filed and were of good quality.
6 It would be unreasonable to expect that there
7 would not be isolated mistakes. The standard
8 cannot be and is not perfection under any gaming
9 regulations or rules.

10 Importantly, there was no testimony or
11 documentary evidence tendered that showed Great
12 Canadian intentionally or willfully breached its
13 AML reporting obligations. With the exceptions
14 of the \$50,000 threshold and large denomination
15 bills issues, there was no evidence of systemic
16 failures by Great Canadian to comply with its
17 reporting obligation. The suggestion that Great
18 Canadian ever broke AML reporting rules to
19 please or cater to VIP patrons in particular or
20 to increase revenue has simply not been
21 substantiated in this hearing.

22 I'd like to move briefly to this \$50,000
23 reporting threshold: 15. BCLC disclosed to
24 FINTRAC that River Rock was underreporting
25 suspicious transactions in the amounts of less

1 than \$50,000 as well as transactions conducted
2 in large denominations of bills as opposed to
3 \$20 bills. BCLC conducted a detailed audit of
4 over 20,000 large cash transactions and
5 determined that only 1.3 percent of them should
6 have also been filed as STRs. Despite the
7 testimony of various witnesses regarding the
8 underreporting, it remains unclear how or why it
9 developed at River Rock and how or why it was
10 allowed to continue.

11 However, the evidence was that both BCLC and
12 GPEB were aware of the underreporting before
13 2015. Neither of those organizations saw fit to
14 ensure that Great Canadian corrected its
15 procedures. While this of course doesn't excuse
16 breaches of AML legislation, it does indicate
17 that the bodies responsible for overseeing Great
18 Canadian did not at the time consider the
19 conduct to be particularly egregious.

20 Fortunately Great Canadian had complied
21 with its large cash transaction reporting
22 obligations, and as a result, BCLC was able to
23 properly file Suspicious Transaction Reports
24 with FINTRAC. Note -- it's noteworthy that
25 FINTRAC didn't impose any penalties or fines

1 against BCLC regarding Great Canadian's
2 omissions.

3 Moving to the growth of large cash
4 transactions from 2010 through '15. Large cash
5 transactions were almost invariably looked at
6 with scrutiny by Great Canadian surveillance and
7 compliance staff and were reported to BCLC and
8 GPEB as unusual transactions. While the
9 company's obligation was only to report it, it
10 wasn't blind to the fact that cash could come
11 from illicit sources. The growth in large cash
12 transactions was not initially viewed as
13 concerning. Gambling in British Columbia has
14 historically been a cash-based effort, and
15 patrons bringing in large sums of cash were not
16 in and of themselves suspicious.

17 From 2010 onwards, large cash transactions
18 did increase in size and frequency, but it
19 wasn't just those types of transactions that
20 increased. All levels of play were growing.
21 River Rock is a strong foundation of mid-level
22 play that drove the business and caused it to
23 expand. River Rock saw significant increases in
24 gambling on the main gaming floor at the same
25 time that the large transactions or high-limit

1 table games were also improving.

2 In a period from 2010 to '14, BCLC developed
3 some concerns about the source of the cash, but
4 it didn't have the evidence to prove or even
5 allege wrongdoing. BCLC generally believed that
6 the more likely explanation was that the cash
7 came from completely legitimate activities. A
8 number of possible legitimate explanations were
9 considered over time. Some of these are
10 outlined in paragraphs 58 and 59 of my closing.
11 But in any event, BCLC did not direct Great
12 Canadian to refuse cash transactions or to do
13 anything more than was already doing.

14 The crystallizing event that changed BCLC's
15 views of the origins of some of the cash
16 occurred in July 2015, when the RCMP advised
17 British Columbia about their investigation of
18 Mr. Jin and his associates. This was the first
19 solid evidence that proceeds of crime may have
20 been entering British Columbia casinos.

21 With respect to GPEB, their investigators
22 did testify they believed right from the get-go
23 that the source of cash coming into casinos were
24 proceeds of crime. However, the GPEB witnesses
25 conceded they themselves didn't have sufficient

1 information to prove even on a balance of
2 probabilities that the proceeds of crime were
3 entering BC casinos. They too failed to direct
4 Great Canadian to refuse the cash.

5 Moving to Great Canadian's efforts to
6 enlist police investigation. While Great
7 Canadian's AML obligations extended only to
8 reporting, the company nonetheless worked hard
9 in engaging law enforcement to investigate what
10 it was reporting. These efforts started well
11 before the July 2015 crystallizing event. Great
12 Canadian had identified Mr. Jin in as early as
13 2012 as a potential cash facilitator or loan
14 shark, and it played a pivotal role in gathering
15 evidence of his activities.

16 During his time at Great Canadian,
17 Mr. Kroeker was instrumental in working with
18 BCLC to try to bring the issue of large cash
19 transactions to the attention of police. This
20 included a meeting in 2014 with the Combined
21 Forces Special Enforcement Unit, where
22 Mr. Kroeker laid out what he perceived was a
23 significant risk around proceeds of crime coming
24 into casinos. These concerns were raised a
25 number of times by Mr. Kroeker and other senior

1 personnel at Great Canadian in subsequent
2 meetings with BCLC and the police in 2014 and
3 '15.

4 Great Canadian became frustrated because
5 they believed cash facilitators were not being
6 adequately dealt with by law enforcement. As a
7 result, in May of 2016, Mr. Ennis issued a
8 directive that no buy-ins would be permitted if
9 a patron was seen to receive funds from Mr. Jin
10 or any of his associates. This prescription was
11 made before GPEB or BCLC made any similar type
12 of order.

13 Great Canadian's efforts to encourage
14 police investigations of cash facilitators and
15 to prevent them from lending significant sums of
16 money to wealthy VIP patrons had the potential
17 to negatively impact revenue. The company
18 nonetheless put compliance and corporate
19 responsibility ahead of profit.

20 Moving now to imposition of cash limits.
21 The underlying theme behind much of commission
22 counsel's questioning was why were there large
23 volumes of cash accepted for buy-ins. For Great
24 Canadian the response is simply this: the
25 company has no power to institute policies that

1 limit the size of cash buy-ins or the number of
2 \$20 bills coming into the casino. The
3 relationship between Great Canadian and BCLC is
4 contractual, and the contractual arrangements do
5 not authorize service providers to create
6 general policies on accepting cash.

7 As Mr. Kroeker testified, such policies
8 could only be implemented by BCLC or GPEB. His
9 evidence was unchallenged. Both BCLC and GPEB
10 could have directed service providers to refuse
11 suspicious transactions or limit the sizes of
12 buy-ins, but it didn't do that. This isn't a
13 criticism of BCLC, especially since they were
14 actively trying to determine the source of large
15 amounts of cash that were coming into the
16 casinos. But Great Canadian can't be faulted, I
17 submit, for not instituting these types of
18 policies on its own, particularly given its very
19 limited access to information.

20 Through the course of the gaming sector
21 hearings, many witnesses were questioned about
22 Great Canadian's preferential treatment of VIPs.
23 There's nothing untoward about a business
24 strategy in providing amenities and comforts for
25 important patrons. The company is in the

1 really bad business."
2 Mr. Doyle provided an affidavit to the
3 commission regarding, amongst other things, the
4 records of 13 of the patrons whose transactions
5 were looked at in this inquiry. What's apparent
6 is that all of these patrons were the subject of
7 a significant amount of very detailed reporting.
8 This allowed BCLC to address problematic
9 behaviour as it saw fit. There's simply no
10 evidence that the company willfully failed to
11 file the necessary reports.

12 I will briefly address an issue regarding
13 Ms. Lisa Gao, who was River Rock's director of
14 VIP guest relations before she was terminated.
15 A significant amount of evidence in this inquiry
16 related to a sexual assault where a patron poked
17 an employee's breast in February of 2016. It
18 has been suggested that Ms. Gao's and Great
19 Canadian's responses to this assault were
20 inadequate. The evidence shows otherwise.

21 The best evidence about what happened is the
22 iTrak Report that was contemporaneously made
23 with the events. That's exhibit 1029. Right
24 after the assault, the victim was comforted by a
25 female Great Canadian employee. Shortly after

1 the apparent crime was brought to the attention
2 of surveillance, surveillance immediately
3 commenced the preliminary investigation,
4 including reviewing videotape evidence.

5 The victim was told by security that they
6 would assist her in any way possible and
7 suggested that the police should be contacted.
8 The victim was visibly and understandably upset
9 and shaken and said she didn't want to speak to
10 anyone, including the police. The assailant was
11 evicted from the premises and barred from the
12 casino. This was one and a half hours after the
13 incident. The compassionate and decisive action
14 by Great Canadian is the exact opposite of
15 tolerating misconduct by high value patrons.

16 Dealing with Great Canadian's activities
17 that went above and beyond its requirements.
18 They're outlined in paragraphs 84 to 91 of the
19 closing submissions. Some of them include the
20 company's significant investment in surveillance
21 systems. Although BCLC mandates surveillance
22 cameras, the system installed at River Rock is
23 state of the art and exceeds BCLC standards. As
24 a result, Great Canadian is able to live monitor
25 a much greater area than is required by BCLC,

1 including the entire parking lot at River Rock,
2 public areas of its hotel and its theatre. This
3 system allowed Great Canadian in conjunction
4 with BCLC to identify cash dropoffs from
5 suspected cash facilitators in its parking lot.
6 The company's voluntary expenditure on its
7 surveillance system exemplifies its attitude of
8 placing compliance ahead of revenue.

9 In 2018 BCLC hired Deloitte to audit
10 service providers' compliance with source of
11 funds requirements. When Great Canadian
12 experienced issues when the requirements were
13 first introduced, the company on its own nickel
14 hired Pricewaterhouse to monitor and assist in
15 getting things back on track. In addition the
16 company initiated an AML compliance program for
17 its non-gaming personnel, including hospitality
18 and food and beverage operations. This
19 requirement was not required under any
20 regulatory policy or law.

21 Great Canadian in conclusion has undertaken
22 and continues to undertake proactive steps to
23 combat potential money laundering. This is not
24 because -- just because it wants to do the right
25 thing. The interests of the company are best

1 served by ensuring that its properties are not
2 associated in any way with illegal activities.
3 The company would lose its ability to function
4 if BCLC or GPEB concluded the company was not
5 compliant with its AML responsibilities.

6 Looking to the future, Great Canadian
7 supports a more risk-based and standards-based
8 approach to regulatory compliance. This
9 approach gives service providers more latitude
10 in how they run their business as well as more
11 responsibility and accountability for AML
12 controls. Great Canadian has previously
13 provided its response to the commission on the
14 recommendations made in Dr. German's reports,
15 including implementation of standards-based
16 models. The company will fully support any
17 recommendation by this commission to move
18 forward towards such a compliance model.

19 Thank you, Mr. Commissioner. Those are my
20 submissions

21 THE COMMISSIONER: I'm sorry. Thank you,
22 Mr. Skwarok.

23 And we will now move to Mr. Gruber of
24 Gateway Casinos & Entertainment Ltd., who has
25 been sought and allocated 15 minutes.

1 **CLOSING SUBMISSIONS FOR GATEWAY CASINOS BY MR. GRUBER:**

2 Thank you, Mr. Commissioner. On behalf of
3 myself and my co-counsel Laura Bevan and Meg
4 Gaily, I'm delivering the oral submissions of
5 Gateway Casinos & Entertainment Ltd., which I
6 will refer to as "Gateway."

7 Mr. Commissioner, you recognized in ruling
8 number 1, in which Gateway was granted standing
9 as a participant, that Gateway's involvement in
10 this proceeding was important because of the
11 operational services it provided to BCLC. In
12 paragraph 66 of that ruling you stated that
13 Gateway's participation will, and I quote,
14 "contribute to the fairness of the inquiry."

15 In our submission this principle of fairness
16 must now extend to the final report. This means
17 that any findings that are made should derive
18 solely from the evidence that has been admitted
19 before the commission mindful of the respective
20 roles and responsibilities of the participants
21 in the gaming industry and free of hindsight
22 bias. Our intention today is largely to rest on
23 our written submission, highlighting a few
24 points and dealing with matters arising in the
25 reply submission of some other parties. On that

1 point, I would note in passing that we did not
2 reply to the BCGEU submissions and will not
3 address BCGEU's reply submissions in reliance on
4 your ruling number 29. We adopt BCLC's position
5 in respect of those submissions.

6 To start we provide a short summary of
7 Gateway's participation in this commission of
8 inquiry. As you know, Gateway is one of three
9 main service providers to BCLC and it operates
10 among the largest casinos in the Lower Mainland,
11 the Grand Villa Casino in Burnaby and the
12 Starlight Casino in New Westminster. It
13 operates an additional 11 gaming sites elsewhere
14 in British Columbia as well as facilities in
15 Alberta and Ontario. Gateway's corporate
16 headquarters are in Burnaby.

17 In operating as a service provider to BCLC,
18 Gateway employs thousands of British Columbians
19 in well-paid positions. The majority of
20 Gateway's employees are registered as gaming
21 workers by GPEB. Not long after the grant of
22 standing as a participant, Gateway invited
23 commission counsel to attend a walk-through of
24 the Grand Villa Casino. Cash cage personnel
25 were made available to speak with commission

1 counsel about patron buy-in process in BC
2 casinos. Commission counsel also toured the
3 surveillance room and reviewed the process for
4 filing iTrak reports based on surveillance.
5 Later, commission counsel interviewed Gateway's
6 chief compliance and risk officer and also its
7 Director of Compliance and AML. Neither was
8 subsequently asked to give evidence.

9 The only Gateway employee to give evidence
10 was Bill Lang, Executive Director of VIP
11 Programs, who swore two affidavits at the
12 request of commission counsel. No participant
13 request of cross-examination on either of those
14 affidavits. One former Gateway employee, Maggie
15 Chiu, who was called to give evidence, but in
16 the event was only questioned by commission
17 counsel and myself. Gateway has participated to
18 the best of its ability in these proceedings
19 before you, but that ability was constrained due
20 to COVID. Particularly the fact that Gateway's
21 operations were entirely closed by public health
22 authorities from March of 2020 until quite
23 recently. Gateway's primary focus during this
24 unprecedented period has been on preserving its
25 business in the interest of its stakeholders,

1 not least the thousands of casino workers whose
2 livelihoods were on the line.

3 The final report will have a direct impact
4 to this industry and workforce, and we submit
5 that this reality should not be overlooked when
6 arriving at the findings and recommendations.

7 We turn next to offering some cautions
8 about the manner in which the evidence is dealt
9 with. First in terms of the generic term
10 "service providers" and second in terms of
11 references to Gateway versus the similarly named
12 but unrelated former service provider. It is
13 easy, Mr. Commissioner, to generalize among
14 service providers. Indeed some participants
15 have done so in their submissions and many
16 witnesses did so in their evidence. But it is
17 important to recognize the operational realities
18 of commercial service providers to BCLC who
19 operate in a competitive and regulated
20 environment. The uncontroverted evidence before
21 you is that service providers do not have
22 visibility into what is happening at another
23 service provider's facility as a matter of
24 course, thus it cannot be assumed that what was
25 going on at one service provider's casino would

1 be known to another service provider or also
2 happening at another service provider's gaming
3 establishment. Very little of the evidence you
4 heard was specific to Gateway by name or the
5 facilities it operates on behalf of BCLC.
6 Gateway submits that the relative paucity of
7 specific evidence led about its operations is
8 testament to its strong culture of compliance
9 with applicable legislation, regulation and
10 policy.

11 Gateway also submits that you should be
12 careful in considering submissions from other
13 parties that generalize about service providers,
14 not to assume that the evidence supports a
15 generalized finding. For example, paragraphs 95
16 and 104 of the province's submissions make
17 generalized statements about pressure or
18 resistance from service providers. But if one
19 actually digs into the evidence cited in the
20 footnotes, the specific communications received
21 by BCLC staff that provided the basis for the
22 submission came from individuals at Great
23 Canadian and not any other service provider.
24 And there is no evidence that these same views
25 were held or communicated by any other service

1 provider.

2 What evidence there was about the
3 facilities now operated by Gateway was largely
4 related to the period before the fall of 2010
5 when those facilities were under different
6 management and ownership by a similarly named
7 but entirely different company. As set out in
8 exhibit 1047, the participant Gateway became the
9 service provider to BCLC on September 16, 2010,
10 when it assumed the MCOSA for the facilities
11 previously operated by the other company.

12 Consideration of the evidence before the
13 Commissioner should be sensitive to this fact.
14 For example, the bulk of the evidence referred
15 to by BCLC in its reply submission at
16 paragraph 32 responding to Gateway's submission
17 actually concerns dealings between BCLC and the
18 former service provider. Further, some time was
19 spent in the evidence on a single incident that
20 occurred in May 2010 prior to Gateway taking
21 over as service provider, where a gambler was
22 provided a letter at Starlight Casino in respect
23 of a convenience cheque, which risked wrongly
24 validating the source of funds. There is,
25 however, no evidence that this represented a

1 common practice at the predecessor to Gateway,
2 nor any evidence that it ever happened again
3 after Gateway became the operator.

4 We turn next to a consideration of where
5 exactly it is that service providers fit into
6 the overall gaming industry in BC. BCLC as the
7 agent of the Crown is responsible for conducting
8 and managing commercial gaming in the province
9 and for the financial performance, integrity,
10 efficiency and sustainability of gaming in
11 British Columbia. Gateway accepts moneys in its
12 casinos on behalf of BCLC as its agent and
13 trustee. Gateway's role is to provide
14 day-to-day operational services at its gaming
15 facilities. It is responsible for complying
16 with all applicable rules and regulations and
17 with the terms and conditions of its contract
18 with BCLC.

19 The commercial terms of the OSAs govern
20 Gateway's operations. Gateway is bound to abide
21 by the *Gaming Control Act* and the cash
22 management policies in place by BCLC. In short,
23 Gateway is an agent of BCLC and operates under
24 the acknowledgement that BCLC is solely
25 responsible for the conduct, management and

1 operation of all casino games in casinos in
2 accordance with paragraph 207(1)(a) of the
3 *Criminal Code* and the *Gaming Control Act*.

4 Gateway submits that the evidence has shown
5 that it consistently meets its obligations as
6 agent for BCLC pursuant to the OSAs and
7 governing law. There is no evidence that
8 Gateway ever systematically failed to report
9 transactions or otherwise failed to provide any
10 information that was or could have been used to
11 prevent, detect and deter money laundering or
12 prevent use of proceeds of crime in casinos.

13 The timely reporting of incidents of
14 concern and the extremely high quality of video
15 surveillance and written reporting at Gateway
16 contributes positively to a safe gaming
17 environment for patrons and workers. It also
18 provides a wealth of information that is used by
19 BCLC, GPEB and law enforcement where necessary
20 and appropriate.

21 Commissioner heard evidence of a specific
22 situation in which Gateway appropriately refused
23 to accept cash where Gateway's cage employees
24 had been advised by a law enforcement officer,
25 after the officer interviewed the patron about

1 the source of funds at Gateway's request, that
2 the patron's funds for the attempted buy-in were
3 suspicious. That was from the examination of
4 Mr. Lightbody by commission counsel and the
5 examination of Mr. Ennis by Mr. McCleery.
6 Furthermore, service providers are audited
7 regularly by GPEB and BCLC in relation to
8 compliance with a number of different aspects of
9 AML processes. The results of these audits are
10 available to the commission. The Commissioner
11 heard no evidence that Gateway ever
12 systematically failed to follow or implement the
13 directions of GPEB or BCLC or otherwise hindered
14 BCLC or GPEB's efforts to implement their
15 proposed strategies to prevent or deter money
16 laundering or the use of proceeds of crime in
17 casinos.

18 This leads us to a few myths that we wish
19 to dispel that have appeared, made their way
20 into some of the evidence the inquiry heard.
21 First, the fact that Gateway serves a commercial
22 function does not mean it traded risk for
23 revenue or that its commercial practices
24 contributed to a proliferation of proceeds of
25 crime in casinos. Any such proposition

1 misunderstands the risks at play. Gateway runs
2 the risk of losing its ability to operate its
3 casinos if they do not meet its contractual
4 obligations in any jurisdiction in which it
5 operates.

6 A false assumption underlying the theory is
7 that large cash buy-ins at tables are the driver
8 of revenue for casino service providers.
9 Firstly, Gateway earns commission on the whole
10 of the services provided to BCLC, not on large
11 cash transactions or table buy-ins. Second, the
12 evidence is that gaming revenue continued to
13 increase generally after BCLC implemented
14 sourced-cash conditions, which resulted in a
15 decline in large cash buy-ins. BCLC's annual
16 service plan reports indicate increases in
17 overall revenue from casino and community gaming
18 from 2013 through to 2018.

19 BCLC has put into the record evidence of its
20 revenues from which Gateway is paid commissions
21 depending on the contractual terms agreed by the
22 parties. We say this in reply to the province's
23 reply submission at paragraph 89, which cites
24 entirely anecdotal evidence for the mistaken
25 proposition that high-limit table games must

1 have been an important revenue driver for
2 service providers.

3 Gateway's operations are marketed only --
4 not marketed only towards high-limit players or
5 indeed mostly towards them. The Commissioner
6 heard evidence from Ms. Cuglietta that the
7 overall increase of revenue generation at
8 Gateway's Grand Villa at Starlight properties
9 between 2019 and -- sorry, between 2012 and 2019
10 was attributed to Gateway's focus on light to
11 casual players rather than high-limit players.

12 Gateway's private enterprise and commercial
13 role is also important to note when it comes to
14 understanding whose role it would be to conduct
15 investigations at police financial networks. As
16 a private enterprise and a structurally complex
17 and highly regulated industry, Gateway does not
18 have the capacity or the mandate to investigate
19 crime or suspicious activity inside or outside
20 of its operations, nor should it, we submit.
21 That mandate properly rests with public agencies
22 who are publicly accountable.

23 Moreover, the commission heard that service
24 providers were generally not privy to the
25 information possessed by public bodies, and as

1 such were not in an informed position to draw
2 conclusions about suspicious activity even if
3 that were their proper role, which we say it is
4 not. Law enforcement, the regulator and the
5 lottery corporation were not directly
6 communicating with service providers prior to at
7 least 2016, who apparently somewhat widely held
8 a view within law enforcement and the regulator
9 that casinos were being used by organized crime
10 to accept proceeds of crime.

11 In this regard, we would make a few comments
12 on some of the participants' reply submissions.
13 With respect to paragraph 46 of Canada's reply
14 submission, all the communications referred to
15 were from law enforcement to BCLC. There is no
16 direct evidence that this was passed on to
17 service providers. With respect to paragraph 68
18 of Canada's reply submission, law enforcement
19 may have expected GPEB to communicate concerns
20 to service providers as necessary, but there is
21 no evidence that GPEB actually did so. With
22 respect to the last sentence of paragraph 32 of
23 BCLC's reply submission, it is true that
24 Gateway's director of security and surveillance
25 was invited to join a cross agency working group

1 following issuance of the Kroeker Report, but
2 the commission did not hear any evidence about
3 whether the intended semi-annual meetings of
4 that group actually went ahead, or if they did,
5 what was communicating during them.

6 We would also submit that the Commissioner
7 should not place any weight on evidence reported
8 by second-hand, third-hand or even remote
9 sources, particularly where no first-hand
10 participant has had the opportunity to set the
11 record straight. An example of this is
12 exhibit 108, in which Mr. Dickson relays to BCLC
13 what he says was brought to the attention of
14 BCLC and service providers by GPEB, despite the
15 fact that he himself would not have been
16 directly party to any such communications. In
17 the absence of corroboration by first-hand
18 participants to such communication, such
19 statements are of no probative value.

20 Furthermore, you should not make an
21 assumption that subjective impressions or
22 interpretations held by some industry
23 participants would automatically be held by all
24 of the industry participants. Particularly that
25 is so given that many of the witnesses who

1 testified about their subjective impressions or
2 interpretations had a background in law
3 enforcement or worked in law enforcement during
4 the relevant time. There is no evidence that
5 anyone at Gateway had such a law enforcement
6 background.

7 As we set out in paragraph 65 of our
8 closing submission, information sharing
9 contributes to an appropriate share of
10 understanding of money laundering and proceeds
11 of crime risks.

12 Mr. Commissioner, with that I would rest
13 upon our written submissions, unless you have
14 any questions

15 THE COMMISSIONER: Thank you, Mr. Gruber.

16 I will now turn to Mr. Usher and Mr. Mayr
17 on behalf of the Society of Notaries Public of
18 British Columbia.

19 MR. MAYR: Good morning, Mr. Commissioner. My name
20 is John Mayr. I'm the executive director and
21 CEO of the Society of Notaries Public, and with
22 me of course is Mr. Ron Usher, general counsel
23 for the society.

24 To begin, we'd like to acknowledge the work
25 of commission, its staff and the many witnesses,

1 experts and of course counsel that have
2 contributed to the hearings.

3 **CLOSING SUBMISSIONS FOR THE SOCIETY OF NOTARIES**

4 **PUBLIC OF BRITISH COLUMBIA BY MR. USHER:**

5 Yeah. Very much has occurred of course over
6 the time since our first presentation to the
7 commission at a public meeting held at the Hotel
8 Vancouver on October 23rd, 2019. We gave an
9 opening statement in February and have attended
10 most of the hearings. Our CEO and secretary
11 gave evidence on February 5th of this year, and
12 we provided closing and reply submissions.
13 These documents and evidence together with
14 exhibits are before the Commissioner and are
15 available on the commission website.

16 In the opening statement we noted that in
17 the preceding 12 months our members have been
18 involved with 88,956 real estate transactions.
19 Of course none of us knew at the time what the
20 impact of the COVID pandemic would be, and of
21 course many, many practice adjustments have been
22 necessary. What is remarkable is that our
23 members in the 12 months, from the beginning of
24 September 2020 through the end of last August,
25 handled 159,405 real estate related

1 transactions. Providing legal services to
2 sellers, lenders, buyers, working in cooperation
3 with notaries and lawyers.

4 From November 30th last year, compliance
5 with the *Land Owner Transparency Act* has been
6 required for every transaction. The
7 administrator of that system reports that from
8 November 30th, when it came into force, through
9 the end of August there were 172,754
10 declarations and 18,882 transparency reports.
11 This of course has added considerable cost and
12 complexity to every single real estate
13 transaction.

14 We're soon to face November 30th for filing
15 by land owners that purchased before the
16 implementation system. As of last week, less
17 than 15 percent of those owners had filed the
18 necessary reports. Of course it should be noted
19 it is not in fact possible to estimate how many
20 should be filing a report. The reason for
21 raising this, this is a cautionary tale for
22 creating complex policies and programs where
23 information and evidence are lacking.

24 Now, we do want to acknowledge that we're
25 [indiscernible] response of our members to -- in

1 compliance with LOTA, the *Land Owner*
2 *Transparency Act*. They have been patiently
3 explaining the difference between legal and
4 equitable ownership to many thousands of
5 bewildered purchasers and have diligently
6 collected and submitted detailed personal
7 information to the registry. It should be noted
8 that the Land Title and Survey Authority staff
9 charged with the creation of operations registry
10 have been supportive and responsive as the
11 complex system has rolled out.

12 A couple of important points and updates,
13 and these we can even credit the commission
14 for -- existing commission. So, for example,
15 just last week the government passed an order in
16 council that gave the society the same right
17 under the act for making inquiries as the Law
18 Society. The very first search we did with that
19 revealed a significant property that would have
20 been unknown in a significant matter. So we
21 thank government for that. And the
22 remarkable -- this is a great example of when we
23 provide authority to regulators to do things,
24 but we could not do until a week ago.

25 While we're talking of that, we heard --

1 there was evidence at the commission from the
2 company off branch of British Columbia and the
3 facility they had created to do more
4 sophisticated searches of corporate record
5 information. And, again, we have previously not
6 been able to do that. We were granted status to
7 do that recently. In the very first search we
8 did that has turned up remarkably valuable
9 information to us, to police and other
10 investigative bodies. So, again, many thanks to
11 everybody that's done those things. That
12 expanded use of our ability to investigate has
13 been phenomenally useful. So many thanks to
14 everybody. And I think it must go to the work
15 of this commission in that regard.

16 But we do urge the commission to be wary of
17 recommending big data and deep analysis
18 solutions to concerns about money laundering.
19 We've discussed this in our written submissions.
20 It is not at all obvious from the evidence
21 before the commission that the big data response
22 to AML has been effective. As has been stated
23 in a variety of ways, we recommended that we
24 look at ways to collect the right information
25 from the right people at the right time. Right

1 information is precise, clearly specified
2 information from original source documents and
3 confirmed by inquiries to official repository.

4 Confirming data is nothing new for
5 notaries. They have entrusted entities to
6 confirm identity and the linkage between people
7 and official acts since [indiscernible]. Every
8 one of our members has a Royal Commission
9 received after swearing an oath that they will
10 not attest any act, contract or instrument in
11 which there is violence -- that's an
12 old-fashioned use of the word "violence,"
13 meaning unauthorized alteration or fraud -- and
14 of all things they would act uprightly and
15 justly in the office.

16 Here's the problem. We now have forms that
17 require the wrong people to attest information
18 that they have no direct or even indirect
19 knowledge of. Buyers are required to confirm
20 information about sellers on penalty of fines
21 and imprisonment. This is set out in document 5
22 with the commission and looking at the property
23 transfer tax form.

24 Let's let buyers and sellers each provide
25 the necessary information in a manner that does

1 not compromise privacy and ensures accuracy. So
2 what has happened is we developed a patchwork of
3 requirements that mandate the uncoordinated
4 collection of data. Different rules apply to
5 different things to get at the same matters. I
6 have no doubt of the sincerity of the effort,
7 but it is time for -- and this is, again, with a
8 useful role for the commission to bring a
9 sensible, big-picture rationalization of these
10 various initiatives and programs that are
11 justified by evidence and sound public policy.

12 We note that uses of false identity in real
13 estate matters is in fact rare. This has
14 happened in my own office. You can watch the
15 video on YouTube. This is rare, though. It is
16 felt that further -- if it's felt that further
17 validation of identity is needed, then give our
18 members direct access to government systems.
19 They can confirm passport, SIN -- social
20 insurance number that is -- driver's licence,
21 service card and other official identification
22 documents. It remains essentially impossible to
23 even confirm the issuance of a BC driver's
24 licence.

25 At one time that was possible, but now,

1 recently, I was told that even a yes or no
2 answer to the existence of a particular BC
3 driver's licence number is not possible and they
4 would not give that information in a very
5 suspicious transaction. A validation system of
6 course would be complex for any single province
7 to do let alone the many nations of the world.
8 But BC has got some industry and
9 government-leading digital identity services.
10 These important projects -- and we make them
11 directly available to our members at the point
12 of the critical moment, not years later, but
13 when they're validating that driver's licence
14 data, that would be hugely useful.

15 And the BC government, a good example, this
16 is -- I think we've all been experiencing
17 lately. The government has rolled out an app to
18 confirm vaccine status. Well, it's time for an
19 ID validation app that our members can use. The
20 right time of course is right before and after
21 transactions. We have supported requiring
22 reporting to tax authorities of the disposition
23 and acquisition of real estate. Not by complex
24 background data scraping and massive use of
25 complex AI systems, but by transparently and

1 banking. The evidence clearly is in this regard
2 that essentially all funds from the public in
3 regard to real estate transactions that are
4 presented to notaries and law firms are by way
5 of bank drafts or credit union official cheques.
6 Many still do not have -- absolutely no source
7 on account information. This is something that,
8 again, the commission can recommend in
9 cooperation with regulators who can make it
10 happen.

11 Fortunately, in a recent transaction, a
12 hand-scrolled notation on a draft by a bank
13 clerk was a tip-off needed to our member, who
14 can then appropriately file a suspicious
15 transaction report with FINTRAC, as they were
16 required to do. That document would have been
17 incredible assistance to an ever-widening fraud
18 investigation. Not to do with money laundering,
19 but a fraud that we have many police agencies
20 getting terrific cooperation from people on.

21 We urge coordination and cooperation
22 throughout all of this with Payments Canada.
23 They are the statutory regulator that creates
24 the back payment systems for Canada. We are on
25 the verge of significant changes to our

1 financial systems that will soon phase out
2 completely the need for and may even prohibit
3 cheques and bank drafts. These realtime,
4 electronic payment systems will provide for
5 explanatory, detailed remittance information
6 that will greatly assist source of fund
7 determinations. This would eliminate, as I've
8 seen recently, bank drafts payable to -- I'll
9 say this: it was actually on a bank draft,
10 casino, Mr. Edgewater. The funds taken out were
11 fraudulently taken from the con man's victim.
12 And that's, again, the subject of now litigation
13 and police inquiry. That would not happen with
14 properly documented electronic transactions.

15 The evidence given to the commission in
16 regard to AML systems around the world has been
17 very useful. We have heard of successes and
18 failures of many models and integration and
19 coordination. A theme clearly is the more
20 integrated, the more directly FIUs, Financial
21 Intelligence Units, are to investigation and the
22 police, the better. That's not how we do it in
23 Canada, and we can learn the lessons -- we heard
24 terrific evidence from the experts the
25 commission called to produce reports.

1 If there's one theme that's throughout all
2 of this, is that information sharing is
3 critical. We urge the commission to recommend
4 all barriers be removed for information sharing
5 between regulatory agencies. We can -- we, in
6 the sense of "we" as a statutory regulator, can
7 only respond to what we know about. It of
8 course is beyond frustrating to learn of AML
9 reports many years after we could have used the
10 information to take swift regulatory action to
11 protect the public. We're not saying this is
12 easy. It is of course not easy to coordinate
13 and cooperate. It can be very comfortable in
14 our various silos. We applaud all those
15 courageous individuals and all manner of
16 agencies who have made attempts to reach across
17 and climb over the many legal and institutional
18 fences that make silo life simple and very much
19 out of the sight of victims.

20 We pointed out in our submissions the
21 complex barriers to doing justice when it comes
22 to AML matters. We urge the commission to be
23 willing to raise systemic issues that will
24 almost certainly require significant further
25 consideration, policy debate and legislative

1 initiatives. There is of course no simple
2 shining the magnificent right answer to money
3 laundering. But we can work together on a
4 multifaceted approach that will give BC what we
5 all want: a well-deserved reputation as a place
6 to avoid for those who wish to launder money.

7 We're not repeating here of course the
8 points raised in our written submissions and
9 evidence. We commend those submissions to all
10 who are deeply and more interested.

11 John.

12 **CLOSING SUBMISSIONS FOR THE SOCIETY OF NOTARIES**

13 **PUBLIC OF BRITISH COLUMBIA BY MR. MAYR:**

14 Yeah. Thank you, Ron. Given the diligent
15 work of commission staff, Mr. Commissioner, you
16 have a large body of important evidence to
17 consider. I personally don't envy your task.
18 It was obvious from your interim report that
19 careful consideration is being given to the
20 voluminous materials before the commission. The
21 Society of Notaries Public stands ready to
22 assist further in any way we can or that you may
23 request, as it is critical that the
24 recommendations be firmly connected to the
25 reality of BC real estate transactions. We are

1 not saying that there should not be any changes
2 in legal practice in this area, but change for
3 change sake or for optics is not likely to get
4 us any further. We stand ready to ensure that
5 our members, the notaries we regulate, are able
6 to effectively and competently carry out
7 whatever the commission may recommend. We are
8 committed to working with any and all
9 governments/institutions as we collectively move
10 forward. We know this is much more difficult to
11 do than to stay. The public deserves committed
12 attention from all of our civic institutions so
13 that they have confidence in the integrity of
14 our justice and economic systems. Thank you.

15 MR. USHER: Thank you, Mr. Commissioner. That's our
16 submission.

17 THE COMMISSIONER: Thank you, Mr. Usher and Mr. Mayr.

18 I will turn to Mr. Butcher on behalf of Brad
19 Desmarais.

20 **CLOSING SUBMISSIONS FOR BRAD DESMARAIS BY MR. BUTCHER:**

21 Thank you, Mr. Commissioner. I have four
22 introductory comments. First of all, I want to
23 emphasize that Mr. Desmarais is proud of his
24 work at BCLC. When he arrived there in 2013,
25 the number and size of cash buy-ins had already

1 been increasing for several years. Although he
2 had a long and distinguished policing history,
3 he had no direct experience with the casino
4 industry. He conducted a review of the
5 landscape, quickly recognized the risks
6 associated with the large cash buy-ins and
7 introduced a number of AML measures that
8 eventually bore significant fruit.

9 The province on behalf of GPEB and BCLC
10 have both reported that GPEB and BCLC are now
11 working well together and that effective steps
12 have been taken, which have reduced the number
13 of large cash buy-ins at the casinos.
14 Mr. Desmarais deserves credit for setting the
15 stage for these positive changes and for being
16 part of the BCLC management team that
17 contributed to the progress that is now well
18 documented and recognized by all.

19 Second, I want to emphasize a comment made
20 by others. You cannot when reviewing the
21 chronological history rely on hindsight or look
22 at the conduct of the institutions and
23 individuals through a 2021 lens informed, as you
24 are, by months of evidence of the participants
25 and experts. This comment particularly applies

1 to the individuals, most of whom came and went,
2 or like Mr. Desmarais, held different positions
3 with different responsibilities at different
4 times.

5 Third, I want to follow up on a comment
6 made by Ms. Hughes. She told you that although
7 you have the potential to find that individuals
8 or institutions make mistakes or could have done
9 better at times, that that should not be the
10 focus of your deliberations. Your report will
11 be much more valuable to the people of the
12 province if your focus is on forward-looking
13 recommendations, which of course are inevitably
14 informed by the lessons of history.

15 Fourth, Mr. Desmarais says that the
16 commission should take a broad view of the
17 evidence and not focus unduly on the minutia of
18 particular conversations or exchanges of
19 correspondence. These things may have been
20 important during the examination of the
21 witnesses, but when viewed in the context of the
22 body of evidence as a whole, have much less
23 significance.

24 I want to turn now to a point that has not
25 been made yet by anybody else. The terms of

1 reference of the commission include the question
2 of whether or not acts or omissions of
3 regulatory authorities or individuals with the
4 powers, duties and functions related to gambling
5 contributed to money laundering in BC or whether
6 any of those amounts -- or -- sorry, whether any
7 of those acts amount corruption. You have heard
8 absolutely no evidence of corruption. That's a
9 comment I make on behalf of all of the
10 participants. I'd go further and say that
11 although you've heard that while witnesses had
12 different opinions, perspectives and suggestions
13 that this or that should be done, you've heard
14 no evidence that would support a finding of bad
15 faith by any of the participants in this
16 hearing. To the contrary, Mr. Desmarais says
17 that he and those directly involved at BCLC and
18 GPEB always had the same objectives: to
19 minimize the risk of money laundering in the
20 casinos. It is my submission that you should
21 make these three basic points, no corruption, no
22 bad faith and shared objectives, early and
23 clearly in your report.

24 I want to turn now to make some comments
25 about Mr. Desmarais's role in the anti-money

1 laundering efforts of BCLC. When looking at his
2 role or that of any other BCLC employee, you
3 must begin with the acknowledgement that he was
4 an employee of a Crown corporation with a
5 mandate to generate profit for public good.
6 Having said that, he and everyone else at BCLC
7 is firm that profits were never placed above the
8 public good.

9 The involvement of Mr. Desmarais is set out
10 in detail in our submissions, but the highlights
11 include the creation of the BCLC AML team, which
12 included both investigators and analysts;
13 imposing an obligation on members of the team to
14 become certified AML specialists; negotiating
15 the first information sharing the agreement
16 between BCLC and RCMP; participating in
17 unsuccessful efforts to engage CFSEU in a
18 criminal investigation of the large cash
19 buy-ins; liaising with the police of
20 jurisdiction in every community that had a
21 casino; liaising and cooperating with GPEB as
22 evidenced by his frequent meeting with their
23 officials and his involvement in the June 2015
24 summit; initiating the imposition of cash
25 conditions on high value players, which

1 commenced at the end of 2014, and banning
2 players even if they were of extremely high
3 value; continuing and developing the PGF
4 program.

5 But if there is one single accomplishment
6 that can be credited to Mr. Desmarais, it is the
7 orchestrating and promoting and ensuring the
8 continuation of E-Pirate, the only significant
9 police investigation to have taken place in many
10 years. Without his contacts and without his
11 encouragement and without his persuasion, that
12 investigation would never have taken place, and
13 we would not know what we know today.
14 Collectively these are very -- these are a very
15 significant suite of AML measures which have led
16 to the much improved situation that we have
17 today.

18 Mr. Desmarais has been subjected to
19 scrutiny because he held the view that the mere
20 use of large amounts of cash was not on its own
21 proof that a particular transaction involved the
22 proceeds of crime. It's important to emphasize
23 that he never said that none of the funds coming
24 into casinos were the proceeds of crime. In
25 fact the measures he took reflected the concern

1 that some of -- his concern that some of the
2 buy-ins were illicit. However, his caution
3 about leaping to potentially incorrect
4 conclusions was entirely justified given his
5 relevant police background, which included work
6 in Southeast Asia, and the circumstances that
7 were known to him, which included the fact that
8 many of the high buy-in players were wealthy
9 people, that casinos had always been cash-driven
10 businesses and that people from Asia or of Asian
11 descent are much more familiar and comfortable
12 with large amounts of cash.

13 I want to just briefly address one other
14 issue that relates to the final question that
15 you have to address, which is the issue of law
16 enforcement. The question framed in the terms
17 of reference is, were there any barriers to law
18 enforcement, and the answer to that is clearly
19 yes.

20 First, the dissolution of IPOC and with it
21 the dispersal of the expertise of its members
22 was unfortunate and has to be one of the reasons
23 for the complete absence of law enforcement at
24 the casinos at the time Mr. Desmarais joined
25 BCLC.

1 Second, the investigation of complex
2 financial crime is extremely time-consuming and
3 expensive. To put it bluntly, the police
4 couldn't afford the luxury of commercial crime
5 investigations when they had competing public
6 safety obligations, such as the suppression of
7 gang violence. CFSEU simply didn't have the
8 resources to follow up on Mr. Desmarais's
9 approaches in 2014. And something eventually
10 went wrong with the one case that was initiated
11 as a result of his persistence. Whether JIGIT
12 is sufficient -- a sufficient response to
13 address those concerns remains to be seen.

14 Thank you. Those are my submissions.

15 THE COMMISSIONER: Thank you, Mr. Butcher.

16 I'll now turn to Samantha Chang on behalf
17 of BMW.

18 MS. CHANG: Thank you, Mr. Commissioner.

19 THE COMMISSIONER: Yes, Ms. Chang.

20 **CLOSING SUBMISSIONS FOR BMW BY MS. CHANG:**

21 As counsel for BMW Canada Inc. and
22 BMW Financial Services, on behalf of my
23 colleague Morgan Camley -- and I will refer to
24 our clients today collectively as "BMW."

25 I want to begin by acknowledging and

1 thanking the commission staff and counsel for
2 its important work. BMW Canada Inc. is the
3 Canadian subsidiary of BMW AG, which is a German
4 multinational company that manufactures and
5 distributes luxury vehicles and mobility
6 services through its retail network in Canada.
7 And BMW Financial Services provides financial
8 services, such as leasing and financing of
9 vehicles, to BMW customers throughout Canada.

10 As you're aware, Mr. Commissioner, BMW is a
11 voluntary participant in this inquiry, and it is
12 the only luxury vehicle manufacturer, seller and
13 financier who has applied for and been granted
14 standing in this inquiry. The scope of the
15 commission's mandate is of course broad, and it
16 has been called upon to make findings of fact
17 and recommendations in respect of money
18 laundering in British Columbia, including the
19 extent, growth, evolution and methods of money
20 laundering in various sectors, including
21 financial services and luxury goods; the acts or
22 omissions of regulatory authorities or
23 individuals with powers, duties or functions in
24 respect of various sectors, such as financial
25 services and luxury goods, to determine whether

1 such acts or omissions have contributed to money
2 laundering in British Columbia; the scope and
3 effectiveness of the powers, duties and
4 functions exercised or carried out by those
5 regulatory authorities or individuals and
6 barriers to effective law enforcement respecting
7 money laundering in British Columbia.

8 As outlined in BMW's opening submissions
9 and the second report of Peter German, QC,
10 entitled "Vancouver at Risk - Turning the Tide -
11 An Independent Review of Money Laundering in
12 B.C. Real Estate, Luxury Vehicle Sales & Horse
13 Racing." Mr. German extensively reviewed the
14 luxury vehicle market and its use in money
15 laundering and grey market schemes, making
16 findings and comments relating to the cash sales
17 of luxury vehicles as a means to launder
18 proceeds of unlawful activity, the use of straw
19 buyers and nominees to effect illegal export of
20 luxury vehicles for grey market schemes in China
21 and elsewhere, including tax refund schemes, the
22 export of luxury vehicles for the purposes of
23 laundering money for criminal organizations and
24 terrorist organizations and the theft of luxury
25 vehicles for money laundering purposes.

1 Norman Shields, the vice president of
2 finance and administration of BMW Canada, has
3 provided affidavit evidence regarding the
4 tactics used by exporters in the unauthorized
5 reselling and export of luxury vehicles, the
6 oversight and implementation of BMW's policies
7 and procedures to combat the unauthorized
8 reselling and exporting of its vehicles,
9 including its joint efforts with various law
10 enforcement agencies and personnel across Canada
11 as well as BMW's policy change proposals for the
12 commission.

13 As the leader in the automotive and
14 financial services industry in Canada, BMW's
15 submissions today will be focused on policy
16 level changes to assist in curbing the use of
17 unauthorized reselling and export of luxury
18 vehicles as a means of money laundering for the
19 benefit of the automotive industry, the
20 automotive financial services industry and
21 consumers in BC.

22 I'm just at paragraph 4 of the closing --
23 of our written submissions. In his affidavit at
24 paragraph 17 through 36, Mr. Shields addresses
25 the methods that in BMW's experience have been

1 commonly used for the unauthorized selling --
2 reselling and export of its vehicles. And these
3 are primarily straw buyers, in which case the
4 exporter has located a nominee, typically called
5 a straw buyer, who will attend at a dealer's
6 location to procure a vehicle on their behalf.
7 The straw buyer holds himself out as the
8 intended user of the vehicle within Canada using
9 their own identification and credit history, and
10 such arrangements may involve the use of an
11 agency agreement or other pseudo-legal
12 agreements between a nominee and exporter, which
13 gives the appearance of a true legal agreement
14 to the nominee.

15 Certain agreements may state that there
16 should be any costs or losses -- that should
17 there be any costs or losses experienced by the
18 straw buyer, the exporter will indemnify them
19 for all losses. And as further detailed in
20 below -- as further detailed in the section on
21 finance fraud, it is often the case that the
22 nominee also themselves becomes the victim of
23 fraud.

24 A second common method is of course identity
25 fraud, and in these cases the identity of a real

1 person is manipulated and stolen usually through
2 the online theft of personally identifiable
3 information or theft of ID documents that allow
4 new documents to be created. That false
5 identity is then used at the dealers to pass the
6 fraudster off as that person.

7 The third method is synthetic identity
8 fraud, and in these cases an entirely false
9 person may be created through the manufacturing
10 of personally identifiable information. This
11 involves the cultivation of a profile of
12 personally identifiable information, including
13 providing a fake person with all the hallmarks
14 of somebody who is legitimate, including
15 address, employment and credit history.
16 Requests for credit are accompanied by
17 employment and addresses, which are then
18 provided to credit reporting agencies by those
19 who are applying. And a profile may begin to
20 emerge over time, and when a sufficiently mature
21 or robust profile exists, then that profile is
22 passed off to be approved for credit and obtain
23 a vehicle.

24 The fourth most common method is the use of
25 corporations, and in some circumstances BMW has

1 noted the use of federal or provincially
2 incorporated companies that are presented as
3 needing employee or fleet vehicles for their
4 business operations, when in fact the businesses
5 do not actually exist or operate.

6 The fifth is the completion -- is completing
7 purchase and lease transactions, and in these
8 situations the exporter or nominee may pay for
9 the purchase of a vehicle in full using various
10 payment methods or they may apply for financing.
11 Alternatively some of these transactions are
12 funded in whole or in part by BMW Financial
13 Services. Some dealerships will require that a
14 customer provide an initial deposit, which can
15 be paid by credit card, cash, bank draft or
16 personal cheque, and thereafter the customer
17 must either provide payment in full of the
18 remaining balance due or sign a conditional
19 sales agreement or lease agreement with
20 BMW Financial Services.

21 Under these agreements the customer becomes
22 the registered owner of the vehicle and agrees
23 to make regular installment payments of the
24 balance financed. In a leasing arrangement of
25 course, BMW Canada remains the owner of the

1 vehicle, and it is leased to the customer for a
2 fixed term. Full payment is then rendered at
3 the time of sale and generally involves the
4 provision of a bank draft, whereas in financing
5 or lease arrangements, funds will be advanced to
6 the dealer by BMW.

7 Prior to completing the purchase or lease
8 of selected models of BMW vehicles, each
9 customer must sign an unauthorized resale and
10 non-export agreement. This agreement contains a
11 variety of covenants, including representation
12 that the vehicle is solely intended for the use
13 of the customers and any permitted secondary
14 drivers and that it is not intended for resale
15 or permanent removal from Canada within
16 12 months immediately following delivery to the
17 customer. The customer then relying upon
18 financing is also required to sign a
19 standardized financing or loan agreement, and
20 once all of the identity and insurance
21 verification, licensing, vehicle plating and
22 other required steps take place, the vehicle is
23 delivered to the customer.

24 Once these transactions are completed and
25 delivery has been completed, a vehicle intended

1 for export may be driven only a very short
2 distance to avoid incurring undesired mileage.
3 As it leaves the dealer location, the vehicle
4 may be transported by flatbed to another
5 location, where it will be prepared by
6 transport, often by a shipping container. In
7 certain cases this has involved disabling or
8 attempting to alter the vehicle's GPS
9 technology, preventing BMW further to its
10 various contractual rights or law enforcement
11 from tracking the exact location of the vehicle.
12 Any straw buyer or fraudulent identity
13 transaction requires that the exporter provide
14 funds and conceal their true source of funds.
15 This frequently involves the use of bank drafts,
16 including scenarios where the exporter obtains a
17 bank draft from the financial institution
18 payable to the dealer or the exporter obtains a
19 bank draft from a financial institution that is
20 payable to the straw buyer, who then purchases a
21 bank draft payable to the dealer. This of
22 course makes identifying the source of funds
23 challenging.

24 And the last scenario is finance fraud. In
25 many instances the acquisition of a vehicle

1 involves financing from BMW Financial Services.
2 Based on our review of finance applications of
3 suspected straw buyers and the similarities in
4 these applications, it appears that the buyers
5 may have been coached regarding what they should
6 state as their career or income and the amount
7 of a down payment that should be proffered in
8 order to meet BMW's credit requirements. BMW
9 has been advised by some of these straw buyers
10 that the exporter has advised of a change in
11 plans and assures the straw buyer that payments
12 will follow. Installment payments may be
13 provided by the exporter through deposits to the
14 straw buyer's bank account or cash payments, and
15 in one case described as cash payments to their
16 mailbox each month by someone unknown to them
17 until it -- and the account went into default.

18 Alternatively the exporter may simply take
19 the vehicle and vanish, leaving the straw buyer
20 to cover any financial obligations. Inevitably
21 in these schemes there is a point in time where
22 the straw buyer can no longer afford the regular
23 installment payments or the leased vehicle due
24 to the return failing to materialize, and the
25 straw buyer must then face the consequences.

1 In our written submissions ending
2 Mr. Shields' affidavit evidence, BMW outlines
3 the efforts it has made to combat unlawful
4 exports on its own. BMW Canada has enforced
5 non-export obligations in a variety of civil
6 actions, and it has successfully prevented the
7 export of many others. Its internal policy is
8 that vehicle sales to unauthorized resellers or
9 individuals who are purchasing for export are
10 prohibited, and BMW requires that its dealers
11 complete know-your-customer protocols to obtain
12 additional information from prospective
13 customers and to ask questions that will assist
14 in determining if the transaction is suspicious.
15 BMW further requires that any customers seeking
16 certain targeted vehicle models enter into
17 agreements prohibiting the resale or export from
18 Canada within certain time frames.

19 Should any of the following occur or if a
20 customer declines to meet BMW's requirements, a
21 dealer is obligated to refuse to sell or lease a
22 vehicle to the customer where there is failed or
23 inconclusive customer identification, where the
24 client refuses to sign the non-export agreement
25 or the payment is presented from a source other

1 than the consumer.

2 BMW has also implemented additional criteria
3 to help its dealers in identifying suspicious
4 transactions, and these include due diligence as
5 to whether the customer's home address and
6 primary place of business are in the dealer's
7 market area, whether the customer is attempting
8 to purchase multiple units of certain vehicles,
9 whether the customer's business is associated
10 with reselling or exporting vehicles, whether
11 the customer has a history with BMW in Canada
12 and any request to deliver a vehicle to a person
13 other than the customer or to a location other
14 than the customer address. In addition, BMW
15 Canada conducts regular export compliance
16 prevention audits of its dealers to ensure
17 compliance with these policies, and it works
18 with various law enforcement agencies and
19 personnel wherever possible to prevent export
20 and recover vehicles.

21 At paragraph 12 of the written submissions,
22 BMW summarizes the updated, enhanced procedures
23 that it has implemented in respect of certain
24 specific models of vehicles, namely the BMW X5
25 and subsequently the BMW X7, which are the

1 models most frequently targeted for such
2 non-authorized reselling and export. Customers
3 who intend to purchase, lease or finance these
4 models must sign a non-export agreement as part
5 of the transaction, and under that agreement the
6 customer represents to BMW that the vehicle was
7 solely for their own benefit and use and that
8 except for permitted secondary drivers, no other
9 party will have direct or indirect control of
10 the vehicle, they do not intend to sell the
11 vehicle to another party, they will not remove
12 or export or attempt to remove or export the
13 vehicle from Canada without BMW's prior written
14 consent and they will submit a written request
15 to BMW Canada should they wish to transfer
16 control of the vehicle to another party. A
17 breach of any of these conditions constitutes a
18 default under the agreement, which gives rise to
19 potential remedies for BMW.

20 Turning to the balance of BMW's
21 submissions. While BMW continues to make
22 internal business efforts to enforce its export
23 prevention policies and to attempt to frustrate
24 this kind of unauthorized reselling, it is BMW's
25 submission that it is not on private automakers

1 to regulate and to attempt to combat these
2 efforts and that policy changes are needed in
3 order to crack down on this kind of behaviour.
4 It is not a crime under the *Criminal Code of*
5 *Canada* to purchase a vehicle with the intention
6 of exporting it. This approach is opposite to
7 that of the United States, which has made the
8 exportation of a new vehicle within 12 months of
9 its acquisition a crime under its laws. BMW's
10 observation was that this legislative change
11 resulted in an immediate and dramatic reduction
12 in this kind of traffic, and implementation of
13 legal changes that make it a federal and/or
14 provincial offence to remove a vehicle from
15 Canada within a specified period of time would
16 in BMW's submissions assist in combatting the
17 unlawful exporting issue.

18 BMW Canada supports the imposition of
19 regulatory requirements prohibiting cash
20 transactions for vehicles in amounts above
21 \$10,000. Cash transactions are often used by
22 exporters to facilitate the purchase or leasing
23 of vehicles and curbing this kind of practice
24 would tamp down on the ability of exporters to
25 engage in such transactions.

1 Further, the ability to claim a refund for
2 PST paid on resold vehicles creates an
3 additional financial incentive for such
4 unauthorized exporting in British Columbia. In
5 BMW's submissions, a repeal of any right to
6 claim a PST rebate on exported vehicles,
7 disallowing rebates for vehicles owned for less
8 than one year and adding a requirement for proof
9 that tax was paid in the importing jurisdiction
10 prior to granting a refund, requiring evidence
11 that there were not any restrictions on resale
12 in the purchase contract would assist.

13 The provincial government should also
14 consider requiring Canada Border Services Agency
15 clearance before granting PST refunds for the
16 resale of vehicles. In our submission such
17 changes would, again, dramatically change the
18 fiscal incentives for exporters to engage in
19 unauthorized reselling and exporting and would
20 eliminate a cost to the public of this kind of
21 activity.

22 At an operational level, BMW Canada
23 proposes the following policy changes, including
24 the integration of the computer systems of CBSA,
25 local law enforcement and the RCMP, or the

1 facilitation of electronic sharing, such that
2 each agency is aware of the efforts and
3 information of the other, including
4 functionality, such that vehicles identified by
5 one law enforcement agency can be communicated
6 or flagged to CBSA on any customs declarations
7 or manifests. This type of inter-agency
8 cooperation and information sharing would
9 improve upon existing information sharing rights
10 and methods.

11 The advancement of certain fraud prevention
12 efforts, such as moving to an exclusively
13 electronic system for shippers to submit export
14 declaration forms and movement away from paper
15 forms being permitted; publishing the portion of
16 export declaration forms relating to vehicle
17 identification numbers, which would allow law
18 enforcement and creditors to identify the VINs
19 of vehicles that have left Canada for use as
20 evidence in any charges and/or civil litigation;
21 allocating greater resources to CBSA and
22 increasing the rate of physical inspections of
23 containers to allow for misdeclared cargo, such
24 as discrepancies between the actual VIN and
25 export declaration form VIN, to be identified

1 and actioned; use of subscriptions or technology
2 services to allow law enforcement to conduct a
3 national search of lien holders for specific
4 vehicles; shifting away from the use of paper
5 forms with watermarks for Canadian work or
6 student visas to a classic card with embedded
7 security features; the prohibition of the use of
8 negotiable instruments to pay off manufacturer
9 loans except where an instrument has sufficient
10 information on it to link to a specific account
11 at an existing reporting entity, such as at a
12 financial institution.

13 And BMW also asks the commission to consider
14 recommending that the provincial and federal
15 governments dedicate additional resources to the
16 ports and to increase the physical presence of
17 law enforcement and other stakeholders.

18 As noted in our submissions, BMW Canada is
19 very appreciative of the collaborative approach
20 and efforts that CBSA and law enforcement
21 personnel have taken in combatting this problem.
22 However, it is clear that the volume of exports
23 from Canada's ports exceeds their abilities and
24 capacity of current resources to effectively
25 deter the behaviour of unauthorized exporters.

1 In closing, BMW Canada urges the commission
2 to remember that industry -- especially the
3 automobile industry and financial services
4 sector -- is not a regulator nor a police
5 service. It cannot be expected to investigate
6 the possibility of predicate crimes or itself
7 attempt to search through the chain of nominees
8 and beneficial owners, which are often difficult
9 to determine. In our submission an effective
10 regime would ensure that any form of reporting
11 and compliance is administratively and
12 operationally easy to implement at the level of
13 the immediate transaction and would ensure that
14 industry can benefit from and rely on
15 pre-established registries.

16 Subject to any questions, Mr. Commissioner,
17 those are my submissions today.

18 THE COMMISSIONER: Thank you, Ms. Chang. I think --

19 MR. MCGOWAN: It might be an appropriate time for a
20 15-minute recess.

21 THE COMMISSIONER: Yes. You read my mind. Thank
22 you. We'll take 15 minutes.

23 THE REGISTRAR: This hearing is adjourned for a
24 15-minute recess until 11:20 a.m.

25 **(PROCEEDINGS ADJOURNED AT 11:05 A.M.)**

1 **(PROCEEDINGS RECONVENED AT 11:20 A.M.)**

2 THE REGISTRAR: The hearing is resumed.

3 Mr. Commissioner.

4 THE COMMISSIONER: Yes. Thank you, Madam Registrar.

5 I'll now call on Mr. Mistry on behalf of
6 British Columbia Government Employees Union, who
7 has been allocated 30 minutes.

8 **CLOSING SUBMISSIONS FOR BRITISH COLUMBIA GOVERNMENT**

9 **EMPLOYEES UNION BY MR. MISTRY:**

10 Thank you, Mr. Commissioner. I along with
11 my co-counsel, Ming Lin, represent the
12 BC General Employees Union, the recent name
13 change of the union. We thank the commission
14 for the opportunity to make these submissions in
15 support of our written submissions. We are also
16 thankful to be able to make these submissions on
17 the unceded territory of the Musqueam, Squamish
18 and Tsleil-Waututh peoples.

19 Over the course of this closing submission
20 we will address three major topics: first, the
21 reason that the BCGEU sought to participate in
22 the commission to provide some contextual
23 vector; second, the problems that have brought
24 us to this position; and third, and most
25 importantly -- as other parties have stated,

1 this is a prospective-looking commission -- our
2 recommendations from a worker perspective with
3 respect to addressing money laundering.

4 I don't intend to follow along with my
5 written submission, but I will -- there will
6 be -- it will follow the rough pattern of the
7 written submission. So the first question. The
8 BCGEU sought standing in the commission for the
9 same reason as everything we do: to protect and
10 advocate for our members. We are not here to
11 shift blame, we are not here to avoid liability,
12 we are not here to mitigate reputational damage.
13 We sought standing and we participated in this
14 commission to serve the interests and protect
15 our members. We sought standing because our
16 membership includes many workers who have been
17 and continue to be directly impacted by the
18 issues covered in the commission's mandate,
19 including workers in the financial services
20 industry, direct government, where the BCGEU is
21 the lead union, and the casino sector, where the
22 BCGEU is the lead union representing members at
23 many casinos in the province, including four --
24 five casinos, pardon me, in the Lower Mainland.

25 As the scope of the inquiry became clear,

1 the BCGEU focused its participation on
2 supporting a prosperous, sustainable gaming
3 industry that respects the right of our members
4 and indeed all workers, whether unionized or
5 not, to safe and healthy working conditions.
6 One of our first steps was to facilitate the
7 evidence and appearance of Muriel Labine, a
8 casino worker and former BCGEU member and
9 organizer. Muriel's extensive journals from the
10 late 1990s through early 2000s provided valuable
11 insight into how money laundering took hold in
12 her workplace, the effort she and her co-workers
13 took to protect themselves and to eradicate the
14 activity and the impact of money laundering on
15 the health and safety of her workplace.

16 As well, at the direction of our elected
17 president, Stephanie Smith, we mobilized an
18 organization-wide effort to identify union
19 members who not only held information relevant
20 to the commission's mandate, but would be
21 willing to publicly testify to their
22 experiences.

23 However, due to pressures exerted from all
24 around, including employers and their co-workers
25 and just generally, our members perceived a

1 threat to their livelihoods and were not willing
2 to take the risk to testify publicly. This
3 pressure and risk perceived by the membership
4 was exacerbated in the context of the COVID-19
5 pandemic, which saw casinos across BC shut down
6 and casino workers furloughed and awaiting
7 callback by their employers. The BCGEU as the
8 bargaining agent for these casino workers could
9 not responsibly advise members to jeopardize
10 their livelihoods and safety by testifying.
11 However, in keeping with our commitment to give
12 voice to workers, we applied to admit the
13 evidence of casino workers via an expert panel.

14 The details of that application are set out
15 in ruling number 29. We do not intend to refer
16 to the evidence we sought to submit. We accept
17 that it was found inadmissible. However, we say
18 your comments in ruling 29 revealed an equally
19 important issue of the absence of adequate
20 whistle-blower protection and its effect on
21 fulfilling the commission's mandate, and here I
22 will briefly quote a passage from that decision.
23 As you say:

24 "I do accept that the absence of evidence
25 from the perspective of front-line casino

1 workers is a gap in the Commission's
2 evidentiary foundation."

3 Moving forward:

4 "The issue that has been inferentially
5 raised by this application, the apparent
6 reticence of casino workers to publicly
7 discuss issues of money laundering or
8 anti-money laundering measures, or to use
9 the whistleblower processes in place for
10 reporting their observations is a matter
11 of concern to the Commission and does
12 engage its mandate."

13 This moves us to the second part of our oral
14 submissions: what are the problems that have
15 brought us to this place. First, we say that as
16 Muriel Labine's evidence outlined, the
17 historically close ties between the casino
18 industry and political decision makers began BC
19 on a path to minimizing and even turning a blind
20 eye to problematic activity in BC casinos. In
21 her almost entirely uncontradicted viva voce and
22 affidavit evidence, Ms. Labine observed efforts
23 of the Great Canadian Gaming Corporation -- and
24 we accept that that was a previous iteration of
25 that company, and with probably almost entirely

1 different staffing. However, it stands still
2 that the owners and management -- Ms. Labine
3 observed efforts of the Great Canadian Gaming
4 Corporation's owners and management to influence
5 politics and policy around gaming in BC.
6 Ms. Labine's employer paid her to work on
7 several BC liberal political campaigns under the
8 supervision of the then vice president of media
9 and government relations for GCGC. Ms. Labine's
10 unchallenged evidence was that the purpose of
11 her work on political campaigns was to help GCGC
12 to gain the ear of influential politicians.

13 These early steps set the casino industry,
14 the former BC liberal provincial government and
15 regulators to pursue a repeated pattern of
16 inaction, what we refer to as "failure to act."
17 Ms. Labine's testimony showed the reluctance of
18 the casino industry to take meaningful action
19 against the initial appearance of illegal
20 activity in BC casinos in the late 1990s, which
21 included widespread loan sharking and probable
22 smaller-scale money laundering. Unchallenged
23 testimony from Ms. Labine detailed the genesis
24 of illegal activity and the failure of
25 management to take action. Ms. Labine testified

1 to seeing numerous incidents involving
2 suspicious cash transactions. She both
3 experienced and witnessed harassment and
4 intimidation from loan sharks and their
5 associates. Her managers refused to address
6 threatening behaviour and sometimes even
7 accommodated loan sharks and VIPs engaged in
8 problematic activity so that they could continue
9 gambling.

10 Disturbed by the apparent organized crime
11 activity at her worksite and fearful for the
12 safety of her fellow workers and casino patrons,
13 she alerted casino management of the illegal
14 activity she was observing and her safety
15 concerns on multiple occasions. When Ms. Labine
16 and her co-workers alerted management to these
17 issues, they were repeatedly told by senior
18 managers that this activity was all simply
19 friends loaning money to friends.

20 The subsequent evidence before the
21 commission outlined in our written submission
22 shows that the casino industry's pattern of
23 inaction in response to the credible evidence of
24 criminal activity apparently only worsened after
25 Mr. Labine was pushed out of the industry in

1 2000.

2 However, the failure to act was not limited
3 to the casino industry. And this is what we
4 want to stress. This is not about pointing
5 fingers, but rather pointing fingers at all of
6 us. This was systemic. This was permeated
7 throughout the industry. It included BCLC and
8 the former provincial government. Suspicious
9 transactions and illegal activity continue to
10 grow apace with increased betting limits, casino
11 expansion and casino revenues in the 2000s.

12 We acknowledge that you will have to weigh
13 the extensive evidence before you and others may
14 not agree with our assessment. However, we
15 submit it is apparent on the totality of the
16 evidence before the commission that BCLC
17 leadership failed to take necessary actions to
18 address the problems being brought to their
19 attention by their own investigators and others
20 in the industry. Testimony from GPEB
21 investigators, BCLC's own employees and law
22 enforcement as well as sanctions from FINTRAC
23 suggests that senior management at BCLC had
24 sufficient information to conclude there was a
25 problem, but failed to act.

1 Again, however, while the failure of casino
2 operators and BCLC to act is not excusable, the
3 industry is rightly structured such that the
4 provincial government has the ultimate
5 responsibility to protect the integrity of the
6 industry and the wider public interest by
7 providing policies and resources to support
8 appropriate regulation and enforcement.

9 The Commissioner heard evidence of former
10 BC liberal provincial government's increased
11 reliance on rapidly increasing casino revenues
12 during the same historical period when that
13 former provincial government engaged in sweeping
14 corporate and personal tax cuts producing a
15 revenue shortfall. We say the entirety of the
16 evidence supports an inference that the
17 self-created revenue dependency motivated wilful
18 blindness amongst decision makers from that
19 former provincial government that resulted in
20 inaction, despite mounting evidence of
21 suspicious criminal activity and warnings from
22 staff on the front lines of monitoring and
23 enforcement in the casino industry. We say the
24 growing dependence on casino revenue seems the
25 likely motivation or part of the constellation

1 of motivations for decisions of senior public
2 office holders from the former provincial
3 government, including BC liberal cabinet
4 ministers, to choose inaction in response to
5 mounting reports from investigators of
6 suspicious cash transactions and probable money
7 laundering in BC casinos.

8 But, again, this is not about pointing
9 fingers, but about figuring out how we got to
10 this position and then hopefully working
11 together to create solutions to ensure that it
12 does not happen again, to ensure workers are not
13 put in situations that are dangerous, that are
14 intimidating, that are harassing again.

15 This brings us to the third part of our oral
16 submissions: our recommendations to address the
17 pervasive presence of money laundering in gaming
18 and ensure a healthy and prosperous gaming
19 industry. We say that the problems we have
20 summarized, particularly the passages from
21 ruling 29, but also Ms. Labine's testimony,
22 militate in favour of a comprehensive and robust
23 whistle-blower regime that protects
24 whistle-blowers in private industries, such as
25 the casino industry. We say if such a regime

1 had existed during the period of inaction and
2 wilful blindness, it is quite possible that many
3 of the adverse effects of money laundering would
4 have been mitigated. Even if such a regime had
5 been invoked later in the day by the former
6 provincial government, it is likely that one of
7 our current members, we say, would have stepped
8 forward to provide a worker perspective that the
9 commission, through both commission counsel
10 submissions and your comments in ruling 29,
11 confirmed is lacking in evidence. Instead, even
12 after the current provincial government's
13 efforts to take action, including through the
14 creation of this commission, this gap remains.

15 And to be clear, what we are seeking is not
16 something unprecedented; it is not something
17 that is a situation where we are asking for
18 recommendations cut out of holed cloth. Other
19 provinces, including Saskatchewan and New
20 Brunswick, have regimes in place that
21 demonstrate that protecting whistle-blowers in
22 all sectors, including the private sector, is
23 possible. These provinces protect employees
24 from being discharged or discriminated against
25 in any manner when they report or propose to

1 report to a lawful authority any activity that
2 is likely to result in an offence pursuant to a
3 provincial or federal act.

4 However, these examples don't end at
5 Canada's borders. Internationally jurisdictions
6 such as the United Kingdom and Japan offer
7 blanket regimes to protect whistle-blowers. In
8 2019 the European Union adopted a directive from
9 the European Commission to protect
10 whistle-blowers. Overall there exists or will
11 soon exist broad protection for whistle-blowers
12 in private sectors in many other jurisdictions.
13 The BCGEU is firmly of the view that BC must
14 adopt a robust comprehensive regime to protect
15 whistle-blowers in all sectors and ask the
16 commission to make recommendations to expand and
17 strengthen whistle-blower legislation,
18 protections and processes, including, first,
19 extending whistle-blower protection to employees
20 in the private sector, as has already happened
21 in Australia and several other jurisdictions;
22 two, expanding legal protections to
23 whistle-blower who use the media or their union
24 as a channel for whistle-blowing activity;
25 three, establishing a formal regime to support

1 whistle-blowing in high-risk sectors, such as
2 the gaming sector, real estate, financial
3 services and luxury car sales; and finally
4 allocating resources to expand public sector led
5 enforcement and compliance in vulnerable
6 sectors.

7 As well scholars have suggested the
8 following features for a whistle-blowing
9 regime -- again, like all of our oral
10 submissions, those are detailed in further --
11 more extensively -- pardon me -- in the written
12 submissions. But some of the suggestions have
13 been broad and clear legislation, adequate
14 mechanisms for disclosure, airtight
15 confidentiality provisions, protection against
16 retaliation and sufficient remedies available to
17 the wronged whistle-blowers such that they can
18 be made whole.

19 The BCGEU concurs that all of these features
20 are necessary. The BCGEU also acknowledges that
21 casinos have implemented policies to combat
22 money laundering, and the casino operators
23 believe they have internal policies in place to
24 encourage and protect whistle-blowers. However,
25 internal policies run by casinos themselves

1 cannot offer the protection that
2 employees/workers need and deserve. For an
3 employee, going through an internal process
4 means having to reveal one's identity, whether
5 directly or by implication. Furthermore, lack
6 of consistency in employer work policies across
7 the various BC casinos is a challenge for
8 workers seeking clarity and security regarding
9 their rights and protections in the workplace.

10 In any case, internal whistle-blower
11 protection by its very nature has no outside
12 supervision or oversight. Such internal
13 protections can never overcome the considerable
14 imbalance of power between a front-line casino
15 worker, a part-time dealer, a busboy, a waiter,
16 a cage attendant, from those working in
17 management -- in senior management. That is why
18 even with union protection, our members were
19 concerned about retaliation or concerned about
20 their livelihoods, were concerned about their
21 safety and were concerned for their fellow
22 colleagues and were not willing to stand
23 forward.

24 The BCGEU does not wish to damage the
25 casino industry. It is in all of our interests

1 to have a healthy and prosperous industry.
2 However, we must still address the harms of
3 money laundering, including the risk to workers.
4 A comprehensive regime protecting
5 whistle-blowers will enhance trust in the
6 industry and hopefully further strengthen the
7 casino industry overall.

8 Our second recommendation is to ensure that
9 any measures that are introduced are not
10 downloaded to front-line workers. A primary
11 interest for the BCGEU is ensuring that any
12 recommendations by the commission fully and
13 centrally consider the implication on working
14 conditions for real people in casinos. To that
15 end, the BCGEU urges the Commissioner to
16 consider the extent to which recommended
17 measures are likely to eliminate or limit risks
18 to the physical and psychological health of
19 workers as well as the extent to which these
20 measures are likely to increase the complexity
21 and volume of work required for front-line
22 casino staff. The BCGEU urges the commission to
23 make recommendations which promote health,
24 safety and secure working conditions of
25 front-line casino workers. Thus, the BCGEU urges

1 the Commissioner to recommend a -- recommend
2 clarifying a requirement for government or
3 casino operators to provide appropriate
4 training, appropriate staffing levels and
5 up-to-date technology to support compliance and
6 monitoring, to be funded in part from the
7 profits of this industry.

8 In conclusion, the BCGEU is highly
9 appreciative of the work undertaken by the
10 commission, the Commissioner, staff and
11 commission counsel and is grateful for the
12 opportunity to participant in this important
13 process to understand and finally address the
14 corrosive impact of money laundering on the
15 Province of British Columbia, the casino
16 industry, and from our perspective, most
17 importantly, the safety and security of
18 front-line casino workers. The BCGEU will
19 continue to advocate for the safety and security
20 of its members and all workers, unionized or
21 not, to work in safe and secure conditions.

22 These are our submissions subject to any
23 questions you may have. Thank you very much.

24 THE COMMISSIONER: Thank you, Mr. Mistry.

25 I'll now -- I understand, Mr. McGowan, that

1 Mr. Burns of the Canadian Gaming Association has
2 elected to rely on that association's written
3 submissions, and so we won't be turning to him
4 at this point

5 MR. MCGOWAN: Yes, Mr. Commissioner. Mr. Burns has
6 advised that he does not on behalf of the
7 Canadian Gaming Association wish to make an oral
8 submission. He has not yet provided a written
9 submission, although I understand he may seek to
10 relieve to file one late.

11 THE COMMISSIONER: All right. Thank you,
12 Mr. McGowan. I'll then turn to Mr. Jaffe on
13 behalf of Mr. Alderson and Mr. Pinnock, and he's
14 been allocated half an hour.

15 MR. MCGOWAN: Yes, Mr. Commissioner. He does act for
16 both of those individuals and has opportunity to
17 make submissions on behalf of each of them
18 separately.

19 THE COMMISSIONER: Yes, thank you. Yes, Mr. Jaffe.

20 MR. MCGOWAN: Perhaps Mr. Jaffe, Mr. Commissioner,
21 could just advise on whose behalf he is making
22 the submission first.

23 MR. JAFFE: I'm sorry, Mr. McGowan, I didn't catch
24 that.

25 MR. MCGOWAN: Yes, Mr. Commissioner. I was just

1 suggesting that Mr. Jaffe identify on whose
2 behalf he is making the submission first.

3 **CLOSING SUBMISSIONS FOR ROSS ALDERSON BY MR. JAFFE:**

4 Right. Thank you. Thank you,
5 Mr. Commissioner, for allowing me to make a few
6 submissions today. I'll be doing that on behalf
7 of both Mr. Alderson and Mr. Pinnock. I'll
8 start with Mr. Alderson, but initially I'll say
9 that the principles I wish to review with you
10 are quite applicable to both of them. As you
11 may know, both have received section 11(2)
12 notices under the *Public Inquiry Act* and so such
13 of my -- many of my observations today will be
14 directed at some of the points raised in those
15 notices.

16 I wish to start by saying that many of the
17 counsel on behalf of the other participants and
18 witnesses in this matter have expressed
19 gratitude to the commission and the very
20 important work it's doing and the hard work
21 obviously being done by yourself,
22 Mr. Commissioner, and counsel and staff at the
23 commission, and it's to be commended. It's a
24 very difficult task for an institution of
25 government to investigate the neglect,

1 indifference and potential corruption of other
2 institutions of that same government, and that's
3 something that is a daunting task and that the
4 public are watching carefully for good reasons.

5 It is with that thought that I suggest that
6 the integrity of the commission itself is to
7 some degree at stake, I would say, by how people
8 who have come forward and who have been
9 described as whistle-blowers are treated. It is
10 imperative not just for the integrity of this
11 commission, but in all sorts of avenues in which
12 one's sense of the public interest transcends
13 personal interests. It's easy for these
14 gentlemen to have followed the rules, advanced
15 their own careers and done the Sergeant Schultz
16 thing of not seeing anything, not speaking, not
17 listening, but they couldn't do it, neither of
18 these gentlemen, either Mr. Pinnock or
19 Mr. Alderson, were content to allow the public
20 interest to be compromised in the manner that
21 they observed in their respective backgrounds in
22 this area.

23 So dealing with just another general
24 observation before I take you to some specifics
25 with Mr. Alderson. The public -- the public

1 know what's going on to some degree. They
2 obviously don't have the details that many of my
3 friends have been making submissions on and that
4 Your Honour has to review, thousands and
5 thousands of pages of details. Obviously that's
6 beyond the public to understand and even
7 yourself at this point until you've marshalled
8 it all together, studied it for the next few
9 months and made your findings. But they know
10 that something terrible has happened here in
11 British Columbia. British Columbians live in
12 BC. They can see what's going on, and they know
13 that something -- that there has been a failure
14 of the institutions of this province, not all of
15 them and in different ways, to protect the
16 public interest.

17 You know, when I listen to counsel on
18 behalf of the other participants and the
19 institutional ones advancing as they must the --
20 what are asserted to be the good job these
21 institutions are doing to combat money
22 laundering, I can't help but think that, you
23 know, the elephant in the room -- and it is
24 known to the public -- I mean, they have seen --
25 they have seen the videotapes of hockey bags

1 full of cash being brought into these casinos at
2 the same time that you have witnesses before you
3 testifying as to the robust anti-money
4 laundering programs supposedly in effect at that
5 time. Now, the public aren't stupid, Your
6 Honour, they know that's untrue. They've seen
7 those same videos whether it's on W5 in early
8 2019 or elsewhere. So I can say it's remarkable
9 to hear some of the evidence that you've heard
10 along the lines of what I've just described.

11 Mr. Alderson has no dog in the fight. He
12 has no reason to expose himself to ridicule and
13 contempt and scrutiny of his mental health,
14 threats to his family, career-ending obstacles
15 by way of the public vilification he has
16 received. He has come forward because, as he
17 testified, he just couldn't keep quiet with
18 respect to what he had observed in his years in
19 the casinos. Why would any of them -- when I
20 say "any of them," I'm talking about
21 Mr. Alderson or Mr. Pinnock -- why would either
22 of them have come forward and subjected
23 themselves to this if they weren't doing it for
24 the right reasons, which is to advance the
25 public interest rather than their personal

1 interests. So there's a lot of little bits and
2 pieces of evidence about who said what and
3 whether Ross Alderson was right about what
4 Mr. Kroeker said or whether Mr. Pinnock was
5 right about what Mr. Heed said and all of this
6 dancing about as to who said what, but the
7 starting point has to be why would Mr. Pinnock
8 and Mr. Alderson be saying these things if it
9 wasn't true? These are gentlemen who have come
10 forward because they wish to advance the public
11 interest, and they do so at the expense of their
12 own career potential, unlike some of the people
13 who have disagreed with them on some of these
14 points who may well have continuing personal
15 interests, whether it's with BCLC or with the
16 RCMP. Those we know cannot be factors for
17 Mr. Pinnock and Mr. Alderson. So the starting
18 point is they have no reason to be misleading
19 this commission when it comes down to those
20 discrepant bits of evidence as to who said what
21 to whom.

22 Mr. Alderson's motives that he testified
23 to -- and I don't think I need to take you
24 there, but I'll give you the transcript
25 reference, September 10th, page 158 to 161,

1 Mr. Alderson is -- starting at 158, he said that
2 from early on he was saying:

3 "... there were bags and bags of cash
4 coming in for years, and, I mean, this was
5 not unknown. And as I recall, and I think
6 it's 2012, there was a board meeting, and
7 they took the video clip of one of the
8 bags of cash coming in and put a music
9 track to it because it was so comedic
10 because the money was so heavy. Everybody
11 knew about it. It's not a secret."

12 So the starting point to looking at the emails
13 and memorandums and notes and all of the things
14 that have been scrutinized is what Mr. Alderson
15 is saying here. Everybody knew about it. It
16 was pointed out to Mr. Alderson. Well, you
17 didn't say to Jim Lightbody something in a memo
18 or you didn't say -- the starting point is
19 everybody knew what Mr. Alderson had observed
20 early in his time at the casinos. That's the
21 starting point.

22 So getting on to his motives, he was asked
23 about his relationship with Mr. Lightbody, and
24 he felt very conflicted because he got along
25 very well with Mr. Lightbody, but at the same

1 time he couldn't keep quiet about this and when
2 we left BCLC in December of 2017, he felt
3 terrible about having, I guess, spoken out and
4 gone public to some degree, being a leak, but
5 he -- so he felt really, really conflicted. He
6 was suffering to some degree and he explained
7 why he did it at page 160 of this transcript.
8 He said he came to Vancouver. He had lived in
9 Amsterdam. He had watched what he called
10 gangbangers driving around. Nothing was being
11 done. He had gone down to Hastings and Main.
12 He observed all the horrible consequences of
13 drug addiction and he says there were -- from
14 his observations back then that they were
15 connections with local politicians, there
16 weren't any prosecutions going on, there were
17 thousands of people dying every year from opioid
18 overdoses. He said:

19 "And at the end of the day, I couldn't
20 with good conscience --"

21 With all this information, I couldn't -- he had
22 to come forward is what he's saying at the
23 bottom of page 161. Those reasons -- of course
24 he wasn't cross-examined on any of this because
25 no one questions, I think -- no one did question

1 why it was that Ross Alderson came forward. Of
2 course they've now -- there's been some
3 suggestion of him being emotionally unstable at
4 the time and other efforts to somehow undermine
5 some of his observations, but no one can really
6 doubt the bona fides of his concerns and his
7 observations and why he felt the need to go
8 public. That's the starting point was Ross
9 Alderson.

10 He goes on at page 163 to say after reading
11 the German report and the comment that -- the
12 comment that institutions of government had
13 unwittingly facilitated some of what he had
14 observed. He took issue with that. He felt
15 this was more than just unwittingly. It was
16 more than indifference or neglect. It
17 understated the seriousness of the failures of
18 the institutions and a culture within those
19 institutions. And so Mr. Alderson said with
20 respect to his decision to go public, he said an
21 individual reached out to him for the purposes
22 of identifying himself and going public as the
23 person who was leaking information to Sam Cooper
24 and that person was Kash Heed. And that
25 started -- his evidence on this starts at

1 page 164 of the transcript. It talks about how
2 they were friends and he knew his father-in-law
3 and how Kash Heed -- over on page 165 -- had
4 phoned up David Eby on his behalf because at the
5 time it looked like Mr. Alderson was going to
6 get fired for being a whistle-blower. So
7 Mr. Alderson goes at some length at page 165, he
8 says "after W5" Kash and I spoke.

9 "He handed the phone over and it was Fred
10 Pinnock and Fred congratulating me for W5.
11 Some of the subsequent meetings I had with
12 Fred, with Kash and with both."

13 So there was a number of meetings, sometimes
14 together with Mr. Pinnock and Kash Heed,
15 sometimes just with Mr. Heed, but Mr. Heed
16 played an important role in encouraging
17 Mr. Alderson to come forward as he has done.
18 And that goes on. His dealings with Mr. Heed in
19 that respect and the encouragement by Mr. Heed
20 of participating with W5 in a public exposure
21 and identifying himself as a source, it's
22 covered in pages 166, 167 of the
23 September 10th -- and I can say nobody has taken
24 a shot at Kash Heed here on this. This is a --
25 he's to be commended in my view, both with his

1 dealings with Fred Pinnock -- I'll get to some
2 of those differences on who said what with --
3 but stepping back for a minute, Mr. Heed as a
4 Solicitor General observed things in Victoria in
5 cabinet what was happening and what wasn't
6 happening. Plus, a lengthy police experience.
7 His views are quite compelling and quite
8 authoritative in my view. And so when he gets
9 behind a person like Ross Alderson and
10 encourages Ross Alderson in the way he did to
11 come forward, to actually set him up with W5 and
12 with Mr. Pinnock, similarly encouraging him to
13 come forward, he's to be commended for that in
14 my view. No one has been critical of him for
15 that. He was an important -- he played an
16 important role both with respect to Mr. Pinnock
17 and Mr. Alderson in terms of the publicity that
18 they created. And I would submit this, that if
19 it wasn't for that publicity it may well be that
20 this inquiry would never have been struck
21 because it was struck after the controversy had
22 reached such levels in the public arena that it
23 became a decision of the Attorney General to
24 strike this commission. I think they're both to
25 be credited to some degree with the fact that

1 this commission exists.

2 Now, with respect to Ross Alderson's
3 character, because that's really to some degree
4 under attack in the section 11(2) notices. I
5 can take you to -- and I won't take you there,
6 but I'll just refer to exhibit 163, which is the
7 telephone -- it's a transcript of the recording
8 that Mr. Pinnock made of a telephone call with
9 Mr. Heed on July 10th, 2018, page 12 and 13.
10 I'll be coming back to this later, this
11 transcript later when I'm dealing with
12 submissions on Mr. Pinnock. But page 12 we have
13 Mr. Heed saying:

14 "Okay, so Ross was the guy that worked for
15 the investigation branch that went to Sam
16 Cooper and gave Sam what was going on."

17 Mr. Heed goes on:

18 "Yes, he's the whistle-blower. And he
19 told me the whole story. And yeah, it's
20 unbelievable. He used to be a cop in
21 Australia."

22 Goes on to page 13:

23 "And he's the one that had a Paul Jin case
24 and started to break things wide open and
25 then saw that nobody inside the

1 investigation -- there was a Mountie that
2 he reported to -- wouldn't do anything
3 about it. Wouldn't do a single thing."

4 So Ross obviously and Mr. Heed are
5 confronting -- and Mr. Heed is with that
6 understanding of the background saying this to
7 Mr. Pinnock. He goes on to say:

8 "So, you know, he took it to Sam Cooper at
9 the media. He met Sam and told him the
10 entire story. So he's no longer there.
11 They got rid of him. I said he shouldn't
12 have quit, but he quit and he just gave
13 them three months. I said, there's no way
14 he should quit, you know. Eby -- and I
15 talked to Eby about it. I said Eby,
16 you've got to protect the whistle-blower.
17 He said yeah, we'll protect the
18 whistle-blower. But you know, this -- the
19 Mountie guy, his superior, just talked him
20 into quitting."

21 Talked him into three months.

22 So Mr. Heed is quite concerned both about
23 Ross Alderson and about the need for
24 Mr. Alderson to really blow the whistle on
25 what -- and I could take you over to exhibit 269

1 again. And this is -- this is another
2 recording, a transcript of recording. This one
3 is from December 31st, 2018, at a lunch, and
4 pages 3 to 10 -- sorry, yes, in that transcript
5 of their get-together that day, Mr. Heed says:

6 "So listen. The reason I phoned you -- "
7 Sorry, sorry, I'm sorry. Stepping back. This
8 is not the lunch. This is a call made on
9 December 31st. This was a call to Mr. Pinnock
10 by Mr. Heed:

11 "The reason I phoned you ... [is] you knew
12 that the whistle-blower had come to me on
13 this whole thing that took off, I told you
14 that, didn't I?"

15 He goes on to talk about Mr. Alderson a little
16 bit and he says over on page 4:

17 "Very few [indiscernible] like you and
18 that really want to do things for the
19 right reasons and he is certainly one of
20 them. Ross and I have been in contact
21 back and forth and Sam Cooper was sent a
22 bunch more about me and Sam for some
23 reason didn't really follow up on it. So
24 Ross was a little frustrated. Ross says
25 Kash, what am I to do. [Indiscernible]

1 just ..."

2 Goes on to say:

3 "Lot more to you story. And he says yeah,
4 he wants to get it out. So long story
5 short, I got a connection right to
6 Anton --"

7 That's the producer of W5. "Who is" -- oh there
8 we go:

9 "-- who is the executive producer of W5."

10 So he goes on at some length about that. And
11 over to page 6 Mr. Heed says:

12 "Okay. So they flew Ross back a couple of
13 weeks ago for a week in Toronto,
14 interviewed him, got tons of stuff. I
15 think they have about three or hour
16 researchers working on this. Anton is
17 having a hands-on as the executive
18 producer. Kevin Newman is going to
19 produce it and pull it all together. They
20 are flying out, so the first part of next
21 week. I have suggested [indiscernible]
22 ... that they might want to have a
23 discussion with you."

24 So it goes on page 7:

25 "Anyhow that is just a piece of the puzzle

1 that you managed to put together on all of
2 this. It's incredible what they have
3 done. So I suggested that they ... [I
4 told them] I'll reach out to Fred."

5 And then just, again, on the whole subject of
6 coming forward and Ross Alderson doing his thing
7 and encouraging Mr. Pinnock to do his thing over
8 on page 10, Mr. Heed says:

9 "Because you know what the whistle-blower
10 legislation policy says at BCLC? The
11 whistle-blower policy in BCLC is you're to
12 take it to your boss.

13 MR. PINNOCK: Oh, really?

14 MR. HEED: How F'ing ridiculous is that?"

15 So that's who Ross Alderson is.

16 Now, just before I get to some of the
17 general principles that I say you ought to keep
18 in mind when you contemplate some of these
19 matters that have been raised in the -- I don't
20 know, Mr. Commissioner, if you've even seen
21 these section 11(2) notices or if you have those
22 in front of you. I'm going to refer to points 1
23 to 5. Okay. I'll summarize them for you.

24 But before you -- before the Commissioner
25 or this commission begins to even think about

1 making findings that are critical of either
2 Mr. Pinnock and Mr. Alderson, I would ask that
3 you -- I've already submitted that it's the
4 integrity of the commission that would really be
5 at stake in the public mind if the
6 whistle-blowers are seen as paying even more of
7 a personal price than they already have. If
8 your findings of fact are made at their expense
9 in my view it has the potential to undermine the
10 integrity of this commission. It would also be
11 unfair because neither of my clients aside from
12 Mr. Alderson to a very limited degree had
13 standing to participant fully in this. Neither
14 of them had the opportunity to have counsel
15 cross-examine any witness called by any party at
16 any time. Yes, they could have applied, spent
17 their own money and tried to encourage you to
18 give them that leave, but the fact is my clients
19 both depended entirely on commission counsel to
20 adduce from them the evidence that they have
21 given. To digress just for a second.

22 Some of the criticisms of Mr. Pinnock were
23 that well, you didn't say this or you didn't say
24 that. Well, that's very true. He's not a party
25 in this matter. He's answering questions that

1 he's asked from commission counsel. He never
2 gave any evidence in chief as though it was his
3 case to advance. So it's quite unfair for
4 anybody to take a run at the credibility of
5 either of my clients on the basis of what they
6 did or didn't say. All of that has to be
7 marshalled through commission counsel.

8 The other reason I would say that you ought
9 to be very constrained in making any adverse
10 findings against my client is because of the
11 legal principles that supposedly govern this
12 process. You've referred to in your -- in your
13 ruling on Fred Pinnock's application for
14 standing, you refer to the principles that apply
15 and that whistle-blowers, at least with respect
16 to Fred Pinnock, and I would say Ross Alderson
17 to some degree is in the same boat -- you
18 referred to the Krever Commission Supreme Court
19 of Canada, Justice Cory's comments, paragraph 53
20 of that -- you didn't refer to it, but I'll take
21 you to it quickly. I don't need to take you to
22 the case, but with respect to the right of
23 inquiries of this nature to make findings of
24 misconduct they should only be made in those
25 circumstances where they are required to carry

1 out the mandate. So allegations such as, for
2 instance, somebody damaged a computer,
3 allegations that, you know, of that nature that
4 may be unflattering to people and critical of
5 them and vilify them to some degree are maybe an
6 interesting backdrop to some of this, but they
7 have nothing to do with your mandate and
8 findings against my clients on matters like that
9 are really, as I read, Justice Cory in the
10 Krever case, quite outside of your functions.
11 It goes on paragraph 55 of the Supreme Court of
12 Canada here. It says but you must make findings
13 against some people and there will be some
14 adverse finding against people, but:

15 "They must be made in order to define the
16 nature of and responsibility for the
17 tragedy under investigation and to make
18 helpful suggestions needed to rectify the
19 problem."

20 So, again, bringing us back to what ought to be
21 the focus and that the section 11(2) notices
22 issued to my clients clearly contain things that
23 are quite outside your mandate that are
24 unflattering to my clients and that simply would
25 amplify the public concern that my clients are

1 being targeted for some sort of unfair
2 treatment, which really has nothing to do with
3 your mandate. So with that, those general
4 principles in play, I'll take you very quickly
5 to some of your comments on your third ruling in
6 this case, and that was with respect to
7 Mr. Pinnock's application -- or, I'm sorry, let
8 me back up. Your introductory statement in July
9 2019 you reviewed what the mandate of the
10 inquiry is, and you said in that context:

11 "The commission must be strongly committed
12 to ensuring that it respects the right of
13 those individuals and agencies to have
14 their privacy interests, legal interests
15 and reputations protected."

16 So you recognized that as paramount when you
17 announced the commission. On your ruling
18 number 1 on September 24th, when there was a
19 number of applicants for standing, you said:

20 "The inquiry is not an adversarial process
21 with traditional parties or litigants.
22 The commission relies on the commission
23 counsel to assist throughout the inquiry.
24 Commission counsel have the primary role
25 in representing the public interest and

1 ensuring that matters that bear on the
2 public interest are brought to the
3 commission's attention."

4 Ruling 3 you amplify that principle, you go at
5 some length about Mr. Pinnock, and I would say
6 the same -- like I've said earlier, that many of
7 those principles apply to both my clients today.
8 You refer to Mr. Pinnock believing that the
9 conduct of some of the people in the
10 institutions that he observed constituted
11 corruption and gross indifference relating to
12 matters before the commission. You correctly
13 refer to the submissions being made for
14 Mr. Pinnock at the time that the commission
15 would not exist but for whistle-blower like him
16 and there's a risk that if he's not granted
17 standing the only parties before the commission
18 would be individuals and entities with private
19 interest to protect. And just -- so we
20 submitted back then and you observed that a
21 level playing field was necessary. We need to
22 have a level playing field so that public could
23 have confidence in this process. But then you
24 concluded that it's not an adversarial, it's not
25 adversarial. There's no need to have a level

1 obviously with a view that it didn't -- he just
2 decided to not apply for standing. Pinnock did,
3 but he didn't. Then there was -- on May 14th --
4 of course he's following it from a great
5 distance, and you can understand, you will, that
6 Mr. Alderson is very conflicted on this too.
7 His primary concern is his family, his safety,
8 his mental health and -- but at the same time
9 this is all happening in Canada about affairs
10 that he knows that great deal about. So he's
11 suffering great conflict knowing that this is
12 all happening, and then all of a sudden counsel
13 for the commission says on May 14th, we
14 reiterate publicly -- our invitation that he --
15 Mr. Alderson:

16 "Provide us with contact information in
17 order that we can properly address any
18 questions and the issue of him providing
19 evidence."

20 So he eventually at that point -- he's already
21 sent in the affidavit. You've seen the
22 affidavit. I think it's exhibit 1035. 1025.
23 So he sent that in in April. In May there's
24 this public plea that he come forward, so he
25 does that three days later. I don't know if

1 that's in evidence, but counsel for the
2 commission will confirm. May 19th he gets right
3 back to the commission. He applies for
4 standing. Your Honour granted him limited
5 standing in June. Again, he's doing it for the
6 right reasons. It was a tough call for him to
7 come forward and to know that he's going to have
8 to go through this process and everyone is going
9 to be taking a shot at him and disparaging him
10 and he's going to have to relive -- I'm not a
11 psychologist, but the phrase post-traumatic
12 stress disorder comes to mind when I think of
13 the emotional turmoil.

14 Just on that, you know, Your Honour, we put
15 into evidence -- just a glimpse of what my
16 client Mr. Alderson is facing. Exhibit 1035.
17 Those are the emails that he's getting from
18 somebody with inside knowledge about what's
19 going on at BCLC. Now, they go over a period of
20 time right up until just a few days before he's
21 testifying and Ross Alderson, somebody with
22 inside knowledge at BCLC is saying to him -- and
23 I'll read this last email to him:

24 "Think back."

25 Okay.

1 "Hi Ross. We all have faith in you.
2 Think back to the day you got your
3 Canadian citizenship and the celebration
4 with the cake everyone arranged for you.
5 Think of everyone gathering around you.
6 We're all so proud of you."

7 This is from an anonymous person with inside
8 knowledge about what's happening at BCLC:

9 "Think back to how the day was a
10 demonstration of all the support and love
11 you enjoy. Think of the faces of each
12 person who was there celebrating you and
13 the genuine happiness for you. Think of
14 the deep trust we have in you and how we
15 look up to you. None of this has changed
16 despite the path you have been led down by
17 others. Please be the professional, moral
18 ethical leader you're capable of and were
19 before for so many years with us. In a
20 few years your daughter --"

21 Making reference to his daughter. And there
22 were other references to his family before this.

23 "-- will be able to form her own judgment.
24 She will know when the truth is told and
25 when things don't ring true. She will

1 know in her heart. Please think of your
2 daughter. Please tell the truth."

3 You know, I think, Your Honour, you can be
4 excused for thinking that this is a threat -- a
5 threat made to the family of Mr. Alderson to
6 keep his mouth shut and to not come forward in
7 the way he did. And it's made by somebody who
8 knew all about certain events that took place
9 within BCLC. This is not a member of the
10 public, some whacked out person who had read a
11 news story and has gotten hold of Ross Alderson.
12 This is somebody with knowledge and this is a
13 threat against his family, and he still came
14 forward.

15 Now, getting back to the chronology. After
16 Mr. Alderson applied for standing and you
17 granted it in a limited way, that was in June.
18 He wasn't even interviewed at all by commission
19 counsel. Next thing you know he's being asked
20 questions under oath on the stand on
21 September 9th. No interviews. And in fact when
22 he gave evidence with Mr. McGowan, he wasn't --
23 he referred to his notes a number of times. You
24 have hundreds of pages of notes taken by
25 Mr. Alderson contemporaneous with the events in

1 the course of his duties as an investigator,
2 what I submit are classic business records as
3 defined by section 42 of the *Evidence Act*. But
4 in any event, we had an exchange of views on
5 that and you ruled against putting those notes
6 into evidence. But he wasn't even taken to
7 them. And there's numerous instances of
8 meetings that are relevant to some of the
9 matters that are before you. I took him to a
10 few in the limited time I had, and those few
11 pages that we did look at with the witness were
12 marked as an exhibit.

13 What was apparent in my respectful view was
14 that the focus of commission counsel was more on
15 the fact that Mr. Alderson had been unavailable
16 to the commission for quite a while and there
17 was a noticeable antipathy demonstrated by
18 commission counsel in the approach taken with
19 Mr. Alderson. Rather than one of gratitude and
20 accommodation and adducing relevant evidence,
21 there was an attack by commission counsel, an
22 attack upon Mr. Alderson's character because he
23 haven't evidently been easy enough to find, been
24 out of touch. In my respectful view that was
25 unfortunate. It missed the opportunity to fully

1 make use of Mr. Alderson in what he could have
2 provided this commission with further reference
3 to his notes on some of the matters that he said
4 who said when, those kinds of details. I
5 covered some of it in the short time I had. But
6 it was evidence that should have been marshalled
7 through the commission and not in the brief time
8 allowed to Mr. Alderson.

9 I can take you as an example of what -- it
10 was more than just -- I should say it was more
11 than just a failure to take Mr. Alderson to
12 relevant evidence. There was actual objections
13 to evidence that Mr. Alderson submitted was
14 relevant. Relevant to the reasons he's come
15 forward and relevant to what this commission is
16 supposed to be looking at, which is the failure
17 of institutions to address problems like money
18 laundering. And he appended to his affidavit in
19 exhibit R. This is exhibit 1025, and it's the
20 affidavit of Ross Alderson. And exhibit R is a
21 copy of an email from a GPEB investigator named
22 Sam Taylor to Mr. Pinnock, former head of IIGET.

23 Now, I can take you to the transcript, but
24 there's a lengthy back and forth with
25 Mr. McGowan at the time about how this is a

1 contentious exhibit and it not ought to be
2 either put on the screen, and an attempt to read
3 portions of it to Mr. Alderson were objected to
4 successfully by Mr. McGowan. So the public
5 don't know what it is that compelled
6 Mr. Alderson to come forward. And this was --
7 this is a -- this is an investigator in 2019
8 with GPEB who says, among other things -- and
9 it's a lengthy email -- he says:

10 "I think the public would be shocked to
11 learn that GPEB investigators are almost
12 entirely tasked with investigation and
13 enforcement where the casino is the victim."

14 He goes on to say:

15 "I thought that we would be investigating
16 the dirty money directly then flexing our
17 regulatory authority to make sure casinos
18 weren't complicit in accepting it. Yet
19 even where casinos are clearly not
20 following basic AML procedures, we've been
21 told to ignore it."

22 This is the GPEB investigator in 2019 telling
23 Fred Pinnock after Fred Pinnock went public. So
24 as a reason why Ross Alderson comes forward,
25 among other things is that this problem is still

1 happening, even in 2019, almost two years after
2 Mr. Alderson left BCLC. He had obviously had a
3 great deal of exposure to what was or wasn't
4 happening at GPEB. But the fact that this
5 evidence would be objected to by the commission
6 and by commission counsel, must raise concerns
7 because it squarely -- it's not only within your
8 mandate, it's got to be the focus of it. It's
9 not -- no one could argue that it's peripheral
10 or collateral. It reflects the guts of this
11 inquiry and instead we hear from the province's
12 lawyer that evidently this witness had resiled
13 from the comments that he put in black and white
14 and at great length in an email. Well, of
15 course that witness was never called. And that,
16 again, has to be the mystery in the minds of
17 many as to why not.

18 Another example of -- another example of
19 that is exhibit 1035. It is the portion of
20 Mr. Alderson's notes that were taken. These
21 particular notes that I'll refer you to are
22 page 68 to 71. It's a meeting on April 18th at
23 the River Rock, April 18th, 2012. And these are
24 notes taken that day by Mr. Alderson. Who was
25 there, Terry Towns, Stone Lee, Steve Beeksma,

1 Gord Friesen, Bryon Hodgkin and Ross Alderson.
2 And those notes -- there was a great debate on
3 whether or not Mr. Friesen had said it's all
4 about the revenue, the reasons why things
5 weren't happening and meaningful steps weren't
6 being taken, and although the concerns that
7 Mr. Alderson had raised back then and raised in
8 his affidavit, and so it was me in my little
9 25 minutes that takes -- rather than commission
10 counsel who takes you to page 71 of those notes
11 where Mr. Alderson notes that Friesen said his
12 hands were tied; it's all about the revenue.
13 Now, that's just one portion of lengthy notes
14 that it happens to be focused on that one point
15 at issue there. If I hadn't put that in, it
16 wouldn't be in. And then you would be faced
17 with a conflict between who said what when and
18 you may find against Ross Alderson on that. It
19 was -- it wasn't Ross Alderson's job in my
20 submission to be putting that material before
21 you; it was commission counsel's. And in my
22 respectful view what you said in your reasons
23 for denying standing of Mr. Pinnock and the
24 principles that are supposed to apply to
25 whistle-blower were not in effect when

1 Mr. Alderson was called.

2 I'm going to try and split my time roughly
3 evenly between Mr. Pinnock and Mr. Alderson. I
4 think I lost track of the exact time I started.
5 But I think it was about -- I don't know
6 Mr. McGowan, are you --

7 MR. MCGOWAN: Yeah, I have a note of 11:44,
8 Mr. Commissioner.

9 MR. JAFFE: Thanks. So that's -- thanks. I'll speed
10 up, then, a little bit.

11 On the points, Mr. Commissioner that we've
12 been notified under 11-2 of the inquiry act,
13 with respect to point 1, the suggestion that he
14 improperly provided confidential BCLC
15 information to the media without authorization,
16 my first submission on that is it's irrelevant
17 to your mandate. It has nothing to do with
18 exploring the institutional failures that has
19 led to the matter before you, and secondly
20 guilty as charged. Yes, he did. And he would
21 do it again tomorrow. The inquiry would not
22 exist if he didn't do that.

23 I can do no better than to refer to
24 paragraph 42 of Mr. Alderson's affidavit. He
25 says:

1 "I went to a person I trusted in the media
2 because I believed that was the only route
3 to get the story out while it's
4 guaranteeing mine and my family's personal
5 safety. It was a huge decision and not
6 one out of any petty personal spite."

7 It goes on anyway. The impact it was having --
8 anyways it goes on at some length on why he
9 leaked -- why he became a leak. And you've
10 heard why he decided to go public about it was
11 very much at the encouragement of Kash Heed.

12 Point 2 he damaged a computer, a laptop, it
13 says for the purpose of concealing the nature
14 and extent of your conduct. This is a classic
15 shooting of the messenger, a picking on the
16 whistle-blower, allegation has nothing at all to
17 do with your mandate, and it's all based on
18 hearsay because the people whose comments refer
19 to the laptop never saw the laptop. There was
20 no continuity, as we say, between any
21 observations they could make directly and what
22 happened to that computer. Mr. Alderson gave
23 evidence on that, and the idea that the
24 commission might make a finding against him for
25 purposely damaging a computer is unsupported by

1 the evidence. And secondly, this nefarious
2 motive that it was done to conceal the nature
3 and extent of conduct is, to be generous, pure
4 speculation and without a scintilla of evidence
5 on that.

6 Points -- oh, point 3 was he deliberately
7 destroyed a notebook because I guess the
8 argument as I understand it is there's a
9 difference of opinion on what Kroeker said at a
10 meeting, Mr. Kroeker said at a meeting, about
11 easing up. The other participants at the
12 meeting have denied that there was that comment.
13 There was the investigation by Mr. Skrine at
14 GPEB. Everyone has concluded that Ross
15 Alderson's recollection is unfounded of the
16 direction given by Mr. Kroeker.

17 Well, Mr. Alderson stands by his evidence.
18 He has nothing to gain. He, unlike those who
19 have denied the statement, has no position at
20 BCLC or any other government institution which
21 could be compromised by coming out and saying
22 what actually took place. Alderson has no dog
23 in the fight here. We do know that Alderson was
24 very upset and very angry and very conflicted
25 when he went public. Now, why would that be?

1 Well, one answer is they were told to ease up.
2 It all ties together.

3 So this idea that he throws out his notes
4 because he wants to hide evidence -- I guess the
5 argument is his notes would have it if they
6 existed and therefore he throughout the notes
7 because his notes didn't have it. But if he's
8 that diabolical -- if he's thinking ahead to
9 some commission years from now that's going to
10 cross-examine him on who said what when, it
11 would be very easy for such a dishonest person
12 to put something into his notes. It could
13 become very self-serving and prove him to be
14 right on a point that he could be lying about.
15 It makes no sense the theory as to why he would
16 be destroying his notes was to prevent them from
17 coming toward to show that because of an absence
18 of something in there, he should be disbelieved
19 on a point. It's a bizarre proposition in my
20 view and a finding that would be completely,
21 again, not within your mandate, I would say.
22 But unnecessarily -- well, just unfounded on the
23 facts. Then that covers -- that covers a couple
24 of the points.

25 But just on Mr. Alderson's -- the

1 proposition that he didn't take adequate steps
2 while he was in his position at the director of
3 AML at BCL -- he wrote on September 8th, 2015,
4 shortly after Mr. Kroeker took over, he writes a
5 memo to Mr. Kroeker setting out his
6 recommendations. That's found at exhibit 493,
7 Your Honour, and I'm running out of time on
8 Mr. Alderson here, so I'll just refer you to
9 that. He sets out -- this is where he's
10 recommending a \$20,000 limit.

11 Now, let me just -- if I'm going to be held
12 to my time, I'd better move on. I just want
13 to -- subject to any questions Your Honour may
14 have. I know I've tried to cover a lot of
15 ground here. Mr. Alderson's [indiscernible]
16 paragraph 42 I think I can conclude just
17 by reading.

18 "If the commission, Cullen's findings he
19 believes I've done something wrong, then
20 so be it, and I'll deal with that when the
21 time comes. The negative circumstantial
22 evidence relating to mine pales in
23 comparison to the documentary evidence
24 which shows my positive actions over many
25 years and my conscience is clear."

1 That is -- those are my submissions on Mr.
2 Alderson.

3 **CLOSING SUBMISSIONS FOR FRED PINNOCK BY MR. JAFFE:**

4 Now, dealing with Mr. Pinnock. He was
5 cross-examined for two and a half hours by
6 Mr. Heed's lawyer, who has made lengthy
7 submissions on why his evidence -- why
8 Mr. Heed's evidence ought to be preferred over
9 Mr. Pinnock's. Keep in mind Mr. Pinnock's
10 counsel never cross-examined Mr. Heed, and
11 Mr. Heed was not cross-examined by anybody at
12 all. He was given the opportunity by
13 Mr. Martland to explain things, but he was never
14 challenged or cross-examined in any way at all.
15 The first thing I'd like to do, Your Honour, is
16 take you back to exhibit 163, which is a
17 transcript from July 10th. It's the -- it's a
18 phone call from Mr. Heed.

19 Now, one of the things that Mr. Heed's
20 counsel attempted to do was to convince this
21 court that -- or this inquiry that Mr. Heed when
22 he says "yeah" doesn't necessarily mean "yeah,"
23 it's just a social behaviour to indicate that
24 he's listening or something, and I am sure that
25 happens sometimes. But there's lots in here

1 that is incapable of being explained on that
2 kind of a semantic basis.

3 This is what -- this is what Mr. Pinnock --
4 Mr. Heed says to Mr. Pinnock. This is after
5 Mr. Pinnock went public through Global news in
6 July of 2018. Mr. Heed says:

7 "So your name's come up many times --"

8 This is page 6 of that transcript:

9 "We've had conversations ... you know,
10 finally you did come out and you said
11 exactly what is going on."

12 This is Mr. Heed to Mr. Pinnock. "You said
13 exactly what is going on." Now, unfortunately,
14 it seems that the media is not before you in the
15 evidence, so -- but Mr. Heed is saying what came
16 out in the media, you said exactly what is going
17 on. And then it says this. Mr. Heed says,
18 still on page 6:

19 "I said [Peter German] was the assistant
20 commissioner of the Lower Mainland,
21 Division when the decision was made, and
22 he was part of that decision-making. It
23 was --"

24 And then it's all blanked out, but there are a
25 number of names, a number of RCMP names there.

1 "-- that were part of the decision-making,
2 were puppets for Coleman, to pull IIGET."
3 This is Kash Heed saying that. We're not
4 arguing about whether yeah means yeah.

5 So I know commission counsel are on the
6 screen and they're going to try and knock me off
7 this. Your Honour, I would ask maybe for a few
8 more minutes to finish these transcripts.

9 MR. MCGOWAN: Mr. Commissioner, nobody is trying to
10 knock Mr. Jaffe off anything.

11 MR. JAFFE: Okay. I was just having a flashback to
12 our last session, Mr. Commissioner.

13 So here we have -- if I can go over to
14 page ... Bottom of page 6.

15 MR. MCGOWAN: I'll just -- if Mr. Jaffe is seeking to
16 take more time than he's been allocated perhaps
17 he should ask your leave to do so.

18 MR. JAFFE: Yes, I would, Your Honour, if I don't
19 finish within the hour. I don't have much more
20 to go, but I think what I do have is important
21 for you, if I can, given that Mr. Pinnock was
22 cross-examined for over two hours on this. It's
23 my chance to take you to the evidence itself.

24 THE COMMISSIONER: Yes, I agree with you, Mr. Jaffe.

25 MR. JAFFE: Thank you.

1 THE COMMISSIONER: You may carry on.

2 MR. JAFFE: Thank you, Mr. Commissioner. Bottom of
3 page 6.

4 "Mr. Heed: And I'll tell you -- and then
5 for --"

6 It's blanked out. He says "for him" -- now, I
7 don't know what the -- I don't want to breach
8 protocol here. Some of these names are blanked
9 out. We know what they are. I'll leave them
10 blank, I guess, in my reading to you. I don't
11 want to transgress what might be expected of me
12 in that regard or shall I fill in the names,
13 Mr. Commissioner? I can take direction from
14 counsel here. We know he's talking about.

15 MR. MCGOWAN: Mr. Jaffe, if they're blanked out,
16 they're blanked out pursuant to a direction of
17 you, Mr. Commissioner. And in my respectful
18 submission, as I'm sure Mr. Jaffe knows, it
19 wouldn't be appropriate to read them on the
20 public livestream given that direction.

21 THE COMMISSIONER: Yeah, I think that's right
22 Mr. Jaffe.

23 MR. MCGOWAN: It wouldn't be appropriate to refer to
24 characteristics of those individuals that might
25 provide some information as to who they are.

1 MR. JAFFE: Well, it is important evidence. But I
2 understand and I'll do my best to strike that
3 balance by not naming specifically who it is
4 under these blanked out portions.

5 Mr. Heed goes on to say: "I said for
6 [expletive] sakes," he says -- rhymes with
7 truck, "sakes."

8 "Part of the problem is the minute you
9 pulled IIGET, the minute I said, [so and
10 so] started to raise some concerns about
11 what is going on and telling what is going
12 on in the casino, in wanting the positions
13 filled."

14 "The minute they pulled IIGET." Well of course,
15 Mr. you know what -- this is -- we know ...
16 now, so Mr. Heed contacts somebody who is
17 writing a report here and says, again, page 7:

18 "Now, you're bringing one of the decision
19 makers back to review it. I said, how
20 hypocritical is that, David."

21 He's talking about a call he made to David Eby.
22 This reflects Mr. Heed's great concerns about
23 his own observations and he goes -- page 8, he
24 says:

25 "It's ridiculous what's going on with

1 these guys here. It's just -- they're the
2 most unethical group of people you can
3 imagine. And then Coleman, Coleman was
4 all part of it. It's their network that
5 caused this tsunami to take place in the
6 casinos. Well -- and I pointed out --
7 now, who did it point it out to just a
8 little while ago? Was it Mike Smith on
9 NW. And I pointed out the fact that the
10 casino are just the -- you know, one piece
11 of the puzzle."

12 So these aren't just "yeahs" coming from
13 Mr. Heed. These are his honestly held
14 passionate beliefs about matters that are before
15 you, Mr. Commissioner. And page 9, Mr. Heed
16 saying so and so:

17 "... has been smoke and mirrors his entire
18 career, and it continues on with just
19 smoke and mirrors. So when I was just
20 watching your stuff and reading the
21 comments about Coleman saying oh, this is
22 slanderous. Oh, I tell you I'll back you
23 up 100 percent, Freddie on any of that
24 bullshit --"

25 This is Kash Heed saying, I'll back you up

1 100 percent Freddy. We see he didn't back up
2 Freddie 100 percent when he got in front of you.
3 Exhibit 164. If I can take you there. Oh.
4 Yes. That's the -- this is the luncheon, the
5 lunch they had together September 7th, 2018.
6 The transcript, again, the -- and one of the
7 points on the 11-2 notice raised against
8 Mr. Pinnock was that he had surreptitiously
9 recorded Mr. Heed and that was contrary to
10 Mr. Heed's expectations of privacy. And the
11 first point I would make that has nothing at all
12 to do with your mandate and secondly Mr. Heed
13 has not backed up Freddie 100 percent. So this
14 commission will benefit from the fact that
15 Mr. Pinnock did take those steps. And the other
16 point I would like to make right now before I
17 forget is Mr. Heed was put on notice before he
18 even had interviews with commission counsel that
19 Mr. Pinnock had taped him. So he, as a good
20 friend would do, said look, Kash, I've got this
21 all on tape, so back me up here; confirm things;
22 don't screw me around. He tells Kash Heed that
23 before he's even interviewed, so if this was I'm
24 going to get -- go out and get Kash Heed, I've
25 got you sort of thing to somehow damage Kash

1 Heed, he certainly wouldn't have done that. He
2 would have let Kash Heed hang himself on his own
3 recollection and then pop the tapes to him. But
4 he didn't do that. He didn't do that.

5 So I want to take you over to on exhibit
6 164, Your Honour. It's a -- there's a lot -- of
7 course this is a lot of social chitchat and some
8 hyperbole exchange between old cops. But this
9 passage is, I think, squarely within your focus.
10 Mr. Pinnock says at the bottom of page 38:

11 "So it was all intended to make --"
12 This is relating to Mr. Pinnock getting
13 disparaged in front of a group of people. It's
14 beginning to blank out name.

15 "-- look like a solid guy who was not in
16 the loop. I remember what he said as --
17 at the end of his shit-kicking of me in
18 public was, we certainly wouldn't want to
19 embarrass the minister."

20 And you know what minister he's referring to.
21 Now, Mr. Heed says -- and this is where I would
22 ask that the transcript be corrected. Mr. Head
23 really says Coleman; okay? But the transcript
24 says Holmes, H-o-l-m-e-s. There was no Minister
25 Holmes. If you listen to the tape Mr. Heed is

1 saying Coleman. And I think commission counsel
2 will agree that that should be corrected in the
3 transcript. There was no Minister Holmes. It
4 was Minister Coleman. And then Pinnock says
5 "yeah."

6 Well there's some further -- so -- so --
7 and, again -- that's exhibit 164. And there's a
8 lot in there, Your Honour, and a review of the
9 actual transcript and even better listening to
10 the tape will dispel you of any idea, any notion
11 that Mr. Heed was just saying "yeah." He was
12 saying a lot. And another thing that I would
13 like to say just, again, before I'll take you to
14 the last exhibit, Mr. Heed in his evidence was
15 sure he never referred to puppets for Coleman
16 back in 2009. You know, Mr. Pinnock said he was
17 gobsmacked that a sitting minister would refer
18 to -- would essentially agree with Mr. Pinnock's
19 observations when -- and how could anybody
20 remember -- how could anybody remember that he
21 didn't use that phrase back in 2009? How
22 convenient for Mr. Heed to know with certainty
23 that he didn't use that phrase when it popped
24 out of him in a -- talking about -- when it was
25 recorded. So when it was recorded, yeah, he

1 admits it. When it wasn't recorded, he denies
2 it. One, how could he remember. And secondly
3 if he's using it in 2018, why wouldn't he be
4 using it -- it was the same Mr. Coleman based on
5 the same observations and the same -- when he
6 pulled IIGET. So it's an amazing bit of
7 evidence that Mr. Heed's memory is so good about
8 what was said in 2009 and he happens to deny
9 that which wasn't recorded. It should cause
10 Your Honour some suspicious if it comes down to
11 who said what on that occasion.

12 If I can take you to exhibit 269. Well, I
13 won't take you there, but I'll just read a
14 portion of it. This is the December 31st, 2018
15 transcript. Actually no, Your Honour, I realize
16 I'm on thin ice here with respect to the time
17 frame. So let me just commend it as good
18 reading for you in terms of the fact that Kash
19 Heed is not just saying yeah, yeah, yeah all the
20 way through. He has very strongly held views
21 about his observations as a minister while he
22 was in Victoria, which of course he carried
23 forward later in life. One of the themes being
24 advanced by his counsel that his comments in
25 2018 reflect his personal views and not what he

1 observed back in Victoria while minister, and I
2 say that's crazy, you can't divorce -- there's
3 only one Kash Heed and it's based on his
4 experiences and observations. And as you read
5 the transcripts, that becomes quite apparent.

6 I'll just ... Just on credibility issues
7 and to -- as a further example of where I say
8 there's an unlevel playing field if it comes
9 down to trying to decide whose evidence is
10 correct or not, just with respect to the unlevel
11 playing field and the unfairness of making
12 findings against Mr. Pinnock, of course he was
13 just answering questions Mr. McGowan asked him
14 on November 5th. Transcript page 116 to 117.

15 Q During your time as an officer in
16 charge of IIGET, did you attempt to
17 communicate these concerns to anyone
18 in government?

19 A Not while I was in charge of IIGET.

20 Q Subsequent to your time as the officer
21 in charge, did you attempt to, or did
22 you communicate these concerns to
23 anyone in government?

24 A Yes. I asked Naomi Yamamoto, who I
25 was then dating in 2009. She was a

1 new MLA ... I believe the election
2 was in May --"

3 Anyway, he goes on to say, asked to arrange a
4 meeting with Rich Coleman --

5 "-- between me -- to alert him to what I
6 believed had been out of control organized
7 criminal activities in the casinos. She
8 did this. She told me she did this. And
9 she told me that it was a group setting
10 and she described his reaction and brutal
11 and dismissive and embarrassing to her."

12 Now, this is Pinnock's evidence. When
13 Mr. Coleman takes the stand, he's examined by
14 Mr. Martland, and the question is:

15 Q Picking up on some points that emerged
16 from Mr. Pinnock's testimony, I just
17 want to make sure that you have the
18 opportunity here to respond to these
19 things. Do you recall you have
20 something to say about the suggestion
21 that you yelled at Ms. Yamamoto when
22 she tried to raise the issue about
23 suspicious cash at casinos during a
24 liberal caucus meeting?

25 Mr. Coleman says:

1 A I don't yell. I mean, I'm actually a
2 very calm individual. I cannot recall
3 a situation ever where I would have
4 raised my voice in a caucus meeting 24
5 and a half years of public life."

6 And then rather than ask Mr. Coleman well,
7 was there -- the question asked was the concern
8 raised with you, what discussions did you have
9 with Naomi Yamamoto, what steps did you take,
10 Mr. Martland just moves off in a different
11 direction. He doesn't challenge the witness and
12 Mr. Pinnock never said that Coleman yelled at
13 Ms. Yamamoto. It was the fiction raised with
14 the witness who deflected it and they moved on
15 into an entirely different area without any
16 actual scrutiny of what did take place. She
17 never said it was in a caucus meeting. So it's
18 an easy one for Mr. Coleman to deflect. I don't
19 yell; I've never raised my voice in a caucus
20 meeting in -- has nothing to do with
21 Mr. Pinnock's evidence. So he just wasn't
22 cross-examined on that. And there's numerous --
23 numerous examples where Kash Heed is not
24 cross-examined. He's given the opportunity for
25 damage control. He's fed these very open, soft

1 questions. He's not challenged. Because --
2 well, Mr. Pinnock didn't have standing. We
3 weren't there to cross-examine him. But
4 surely -- I'll close with this -- it would have
5 been incumbent on the commission to dig a little
6 deeper with these witnesses. Its failure to do
7 so I think leaves open the kinds of points that
8 have been raised in these section 11(2) notices,
9 which are findings that are rather disparaging
10 of my clients who had no control over this
11 process. They simply came forward because they
12 value the public interest more than their
13 personal interests and in my respectful view the
14 integrity of this commission requires
15 recognition of that fact and that it ought to
16 confine itself within the principles that were
17 expressed by Justice Cory in Krever commission.

18 And subject to any questions, Your Honour
19 may have, those are my submissions.

20 THE COMMISSIONER: Thank you, Mr. Jaffe.

21 I think we'll take just a brief
22 adjournment, Mr. McGowan, before we resume with
23 Ms. Mainville. Or perhaps we can go ahead if
24 Ms. Mainville is ready to proceed --

25 MR. MCGOWAN: Just looking at the time,

1 Mr. Commissioner, for a 10-minute adjournment if
2 that's your preference.

3 THE COMMISSIONER: All right. I'm happy either way
4 Ms. Mainville, I leave it up to you.

5 MS. MAINVILLE: I'm ready to proceed. But I am in
6 your hands if you would like a break.

7 THE COMMISSIONER: Why don't we proceed. Thank you.

8 **CLOSING SUBMISSIONS FOR ROBERT KROEKER BY MS. MAINVILLE:**

9 Okay. Thank you. Mr. Commissioner, during
10 our opening submissions in April of 2020 we
11 stated that we expected the evidence to
12 demonstrate that while at BCLC Mr. Kroeker
13 engaged in significant changes to deal with
14 rising concerns about cash, that contrary to the
15 public narrative under Mr. Kroeker's leadership
16 BCLC went above and beyond its reporting
17 obligations, and third that throughout his
18 tenure in the gaming industry, Mr. Kroeker has
19 acted with integrity and performed his duties in
20 cooperation with the province and regulators.

21 This has now been established in the
22 evidence before the commission. The evidence
23 has demonstrated the unimpeachable integrity of
24 Mr. Kroeker and the diligent and progressive
25 work he did in advancing AML initiatives for the

1 gaming industry in this province.

2 Mr. Kroeker's grant of standing was largely
3 premised on an allegation made by Ross Alderson,
4 subsequently reported in the media, that has
5 been wholly discredited in these proceedings.
6 This allegation and the criticism levelled at
7 Mr. Kroeker in the public domain affected and
8 continue to affect his reputational interests in
9 this inquiry. He has paid a heavy personal
10 price, one that we urge this commission to
11 clearly and unequivocally put an end to.

12 Mr. Alderson's allegation that BCLC staff
13 were instructed to ease up on AML measures was
14 false, entirely lacking in credibility and
15 contrary to the objective evidence that the
16 commission heard from numerous witnesses about
17 Mr. Kroeker's integrity and the steps that he
18 took. Mr. Kroeker has set the record straight.
19 The commission has heard ample evidence relating
20 to Mr. Alderson's allegation, including hearing
21 from Mr. Alderson himself. We are now able to
22 cast aside these assertions and with the weight
23 of the evidence behind us state definitively
24 that the allegation was false. To be clear and
25 unequivocal, the statement attributed to

1 Mr. Kroeker was adamantly denied by every
2 witness said to be present other than
3 Mr. Alderson, is entirely devoid of
4 corroborative evidence, including evidence that
5 would necessarily exist on Mr. Alderson's own
6 account and was determined to be unfounded in an
7 independent GPEB investigation and found by GPEB
8 to -- and I quote "run contrary to Mr. Kroeker's
9 historical views and actions of this nature" --
10 I'd ask Mr. Jaffe to turn off his microphone.

11 THE COMMISSIONER: Yes. Mr. Jaffe, if you would
12 ensure your microphone is turned off.

13 MS. MAINVILLE: I might repeat the last portion. The
14 statement attributed to Mr. Kroeker I was saying
15 was not only determined to be unfounded by GPEB
16 but found to "run contrary to Mr. Kroeker's
17 historical views and actions of this nature
18 while employed at BCLC."

19 Mr. Alderson in fact destroyed relevant
20 evidence and lied about that fact to the
21 provincial regulator who was investigating his
22 claim. He lied to the investigator about more
23 than that, going so far as to pretend to be
24 corroborating the statement of an anonymous
25 complainant. That anonymous complaint was in

1 fact from Mr. Alderson himself and it was
2 revealed in these proceedings that it was
3 crafted out of anger.

4 Mr. Alderson conceded that the primary
5 reason he made the complaint against Mr. Kroeker
6 years after the alleged event in question was
7 because BCLC did not stand by him after he
8 breached his obligations and leaked confidential
9 information to the media and gave an interview
10 to W5. He received a letter from BCLC counsel
11 that made him very angry and he blamed
12 Mr. Kroeker. Pure and simple this was an
13 allegation made from spite and upset.

14 Mr. Alderson acknowledged in absolute terms
15 that the AML efforts that BCLC undertook from
16 2015 onward, so under Mr. Kroeker's leadership,
17 were very significant. He agreed that
18 Mr. Kroeker in fact enhanced BCLC's sourced-cash
19 condition program. Unfortunately the allegation
20 has been in the public domain since July 9th,
21 2019, more than two years now. Mr. Kroeker was
22 not in a position to publicly respond up until
23 his testimony before the commission. The
24 inability to address this allegation devastated
25 Mr. Kroeker, his AML team and caused potential

1 employers to view Mr. Kroeker with misplaced
2 concern and distrust after he left BCLC. This
3 allegation had a serious impact on Mr. Kroeker's
4 life and career. That damage is done, but the
5 record should now be set straight.

6 The evidence leaves no doubt regarding
7 Mr. Kroeker's integrity and diligence. He was
8 described by virtually every witness with
9 knowledge of him as having some of the highest
10 levels of integrity as being hypervigilant on
11 AML and compliance issues and as being one of
12 the most honest and dedicated public servants in
13 the province. With respect to compliance and
14 AML, Mr. Kroeker was chosen to assess and lead
15 AML compliance efforts in the gaming industry by
16 government and by industry and by a Crown
17 corporation due to his expertise and work in
18 this area.

19 As BCLC's VP of Corporate Security and
20 Compliance, Mr. Kroeker's commitment to
21 improving BCLC's AML regime never faulted. His
22 efforts were essential to the substantial
23 improvements in the gaming industry between 2012
24 and 2019.

25 Here's what we know: from the start of

1 Mr. Kroeker's time at BCLC STRs, LCTs and the
2 prevalence of cash generally began a steep
3 decline. As former ADM Cheryl Wenezenki-Yolland
4 testified, suspicious transactions "came down
5 dramatically and they kept coming down." By the
6 time Mr. Kroeker departed BCLC in 2019 the cash
7 issue had largely been addressed. From the peak
8 of STR filings in 2015 to the lowest value in
9 2018, there was a 98 percent drop in the dollar
10 value of STRs. This outcome, at least in part,
11 is as a result of Mr. Kroeker's significant
12 actions while at BCLC, his diligence and his
13 dedication to AML. Within days of starting at
14 BCLC and learning that some of the cash entering
15 the casinos was directly linked to organized
16 crime, Mr. Kroeker was immediately proactive and
17 responded by formalizing and expanding the cash
18 condition program. As a result, it applied any
19 time there were concerns about source of funds
20 and a broader number of patrons were directly
21 targeted. As the program continued, BCLC
22 targeted patrons of lower and lower risk. At
23 the same time Mr. Kroeker enabled investigators
24 to initiate patron barring for cash facilitation
25 on their own initiative. After JIGIT was

1 created in 2016, Mr. Kroeker immediately amended
2 BCLC's information sharing agreement with the
3 RCMP to ensure JIGIT had access to the same
4 information.

5 In 2016 Mr. Kroeker tightened controls
6 around shifts to minimize the money laundering
7 and proceeds of crime risk they presented. In
8 May 2016 under Mr. Kroeker's leadership, BCLC's
9 AML unit identified further high-risk players
10 and established a formalized interview process
11 to determine their source of funds. In October
12 2016 BCLC implemented a directive requiring
13 service providers to refuse cash transactions
14 where casino staff observed suspicious
15 behaviour, including where casino staff observed
16 patrons receiving cash from cash facilitators in
17 real time, and a process to ensure the money was
18 not accepted at other casinos.

19 In June 2017 Mr. Kroeker on behalf of BCLC
20 executed an information sharing agreement with
21 the civil forfeiture office to enhance BCLC's
22 ability to conduct due diligence and combat
23 money laundering. In December 2017 BCLC issued
24 a directive requiring a receipt in respect of
25 bank drafts to ensure funds were properly

1 sourced.

2 In January 2018 when BCLC was developing
3 its policy following Dr. German's source of fund
4 recommendation, Mr. Kroeker filled perceived
5 gaps in the recommendation by implementing a
6 same day receipt requirement on top of the
7 source of funds declaration, a practice that was
8 unique to BC, and by declining to implement the
9 exception proposed by Dr. German for new
10 customers. In March 2018 BCLC implemented a
11 directive derisking MSBs, money service
12 business, meaning that funds could not be
13 sourced from these entities as they created too
14 great a money laundering risk. No other
15 jurisdiction has banned funds from being sourced
16 from MSBs, and it is important to note this in
17 itself may have significantly contributed to the
18 2018 decline in large cash transactions -- large
19 cash transactions that followed.

20 And finally from September 2015 to July
21 2019, during his tenure at BCLC, Mr. Kroeker
22 developed and implemented various cash
23 alternatives, including international electronic
24 funds transfers and enhanced convenience
25 cheques.

1 Under Mr. Kroeker BCLC regularly pushed the
2 envelope to address risk beyond what GPEB,
3 government or even FINTRAC felt was necessary.
4 In response to a novel risk, BCLC implemented
5 novel AML programs. In short, there was
6 continual progress and action under
7 Mr. Kroeker's leadership. From 2015 to 2019
8 BCLC's AML unit complied with requests from GPEB
9 and government. BCLC progressively lowered its
10 risk tolerance for unsourced cash from higher to
11 lower-risk patrons. This is what everyone
12 ultimately wanted, not that every \$20 bill, \$500
13 transaction, \$5,000 transaction or even \$10,000
14 transaction be verified. In a cash business not
15 all cash was suspicious. BCLC's AML program was
16 continually expanding, its customer due
17 diligence policies and practices were updated
18 and amended to ensure that BCLC was obtaining
19 all relevant information about its patrons.

20 As former Minister de Jong stated, the
21 proof is in the pudding. Through 2016, BCLC
22 made significant progress in reducing STRs and
23 cash. The current General Manager of GPEB,
24 Mr. MacLeod, testified in relation to the state
25 of BCLC's AML controls developed during

1 Mr. Kroeker's tenure that he has not seen the
2 need to issue a directive to BCLC requiring
3 stricter AML controls.

4 In BCLC effects to ensure its actions were
5 evidence based, Mr. Kroeker and the AML unit
6 undertook appropriate analyses to inform BCLC's
7 response. Over time, however, Mr. Kroeker grew
8 increasingly disappointed with GPEB's reluctance
9 and often outright refusal to provide
10 information that would have assisted BCLC to
11 improve its AML regime to ensure public safety
12 or to address a specific risk.

13 As you heard, Mr. Commissioner, the flow of
14 information went one way, from BCLC to GPEB.
15 Witnesses from both organizations testified that
16 important and relevant information reports and
17 audits were often withheld from BCLC or were
18 provided years after they would have been
19 useful. The evidence has shown that when
20 reports and audits were shared with BCLC, they
21 were not infrequently marred by inaccurate
22 assumptions and errors. BCLC's proposals,
23 particularly those related to cash alternatives,
24 were often met with resistance. Until October
25 2016 BCLC had been advised that GPEB needed to

1 approve proposals before BCLC could implement
2 them. BCLC's cash alternatives proposals to
3 GPEB often resulted in a near endless cycle of
4 review and amendment. Sometimes this cycle
5 repeated for years. In October 2016, however,
6 GPEB suddenly asserted that its approval was not
7 needed. BCLC immediately began the process of
8 implementing further cash alternatives.

9 These issues-driven conflicts created some
10 difficulties in BCLC and GPEB's relationship.
11 There was a growing distrust as the channels of
12 communication and information sharing broke
13 down. In the face of this, however, Mr. Kroeker
14 did not simply hold up his hands and say nothing
15 could be done. He took action. He hired
16 Mr. deBruyckere to fill the role of director of
17 AML and investigations and to lead BCLC's
18 relationship with GPEB.

19 The commission has heard evidence that as a
20 result, the current relationship between BCLC
21 and GPEB is collaborative, positive and
22 respectful. Unfortunately the public narrative
23 on this issue, which the province insists on
24 sustaining contrary to actual evidence, has
25 eclipsed and obscured the significant AML

1 improvements at BCLC from at least 2015 onwards.
2 Several media reports contained inaccurate and
3 misleading information. Likewise in 2017, GPEB
4 continued to assert to government that BCLC was
5 reluctant to act in the face of a massive
6 problem of BC casinos being used to launder
7 money and indeed that BCLC denied there was a
8 problem despite the fact that BCLC had taken
9 significant steps and ignoring the fact that the
10 gaming industry was far different than it had
11 been in 2015.

12 This misleading picture was presented to
13 newly-elected Minister Eby as fact, which he
14 testified caused him to be sceptical of BCLC and
15 distrust BCLC's information regarding what had
16 been done and what risks remained.

17 This inevitably impacted the public record
18 on the issue and the public's perception of what
19 was happening. BCLC had in fact made
20 significant changes in the previous two years
21 before that conversation took place in 2017.
22 And Mr. Jaffe, I might pause to say, just asked
23 the question why would Mr. Alderson and indeed
24 why would his clients lie about what they say
25 transpired, stating they have no personal

1 interest to lie, that Mr. Alderson is a dog
2 without a bone. And in my respectful
3 submission -- and I will limit my comments to
4 Mr. Alderson for these purposes -- he very much
5 has a personal interest in distancing himself
6 from this very narrative -- from an extremely
7 powerful but flaw flawed public narrative.

8 There was, we have seen, a very strong
9 current and indeed people tend to like to be on
10 the bandwagon. BCLC in fact continually lowered
11 its risk tolerance for suspicious cash to
12 require patrons of lower and lower risk to
13 establish their source of funds and it was alert
14 to any patrons buying in with suspicious funds.
15 As the commission has heard, a risk-based
16 approach is favoured by the regulator, industry
17 body guidance and international bodies. It was
18 consistent with the direction being given by
19 GPEB and government to identify source of funds
20 on a risk basis. From at least 2015 forward,
21 BCLC's policies were stricter than FINTRAC
22 requirements and existing AML controls in other
23 high limit jurisdictions. BCLC implemented
24 novel policies to address changing risk. A
25 number of witnesses commented on the politicised

1 rhetoric, political posturing and hyperbolic
2 media reporting on these issues. Statements
3 like everyone was willfully blind to where the
4 money was coming from and nobody said no to
5 taking this money have proven to be highly
6 inaccurate and were unhelpful as they actually
7 work against practical and effective solutions.

8 You've heard evidence about how this
9 narrative wrongly and unfairly disparaged the
10 reputations of scores of diligent, honest and
11 hard-working front line employees at BCLC, GPEB
12 and casino service providers. We urge the
13 Commissioner to formally acknowledge that much
14 damage was done to the reputations and morale of
15 front line staff. It was done without regard to
16 the facts and it was a fundamental unfairness
17 given they had no way to respond or correct the
18 record and still do not.

19 This commission ought to set the record
20 straight and correct the public narrative. Much
21 can still be learned. Looking forward, the
22 importance of communication and collaboration,
23 but perhaps most significantly trust between all
24 agencies and organizations involved in gaming
25 cannot be underscored enough. Competence is one

1 thing. It is something that should be sought
2 and enabled but that can sometimes be lacking
3 despite the good efforts and good faith of all
4 involved. But reflexive distrust of the work of
5 a public corporation and its employees, that is
6 something that can be avoided and that must be
7 eradicated to create the foundations of a
8 collaborative relationship that can actually
9 achieve progress. This is fundamental because
10 illicit actors will always try to find ways
11 around existing controls. The industry must be
12 nimble. It must have the ability to act as
13 required without significant lags in approval
14 and other obstacles in the way. Distrust is one
15 such obstacle. Let's state it bluntly. The
16 hard-working people at the lottery corporation,
17 including those working on AML, were regularly
18 viewed with suspicion and distrust by their
19 colleagues at GPEB. This led to all sorts of
20 issues, viewing proposals with suspicion, not
21 sharing information about reviews, audits or
22 risks, insufficient exchanges of information
23 leading to misunderstandings and a poor grasp of
24 what the lottery corporation was in fact doing.
25 Agency collaboration is essential to effect AML

1 controls.

2 The tide has started to turn. Setting the
3 record straight on the good work that the people
4 at BCLC did on AML over the past several years
5 will assist. It behooves this commission to do
6 no less, to look beyond the public and media
7 narrative that led to this inquiry in the first
8 place at the evidence before you in a fair and
9 balanced manner and to not with the clear vision
10 of hindsight substitute its view for decisions
11 made in the midst of fluid, difficult and
12 evolving circumstances. It would not only be
13 unwarranted, it would undermine, in our
14 submission, the purpose this commission is
15 intended to serve. It is time to create a path
16 forward to a functional, regulated industry
17 where stakeholders work collaboratively together
18 with respect for each other's expertise and
19 without unnecessary and undeserving suspicion
20 directed at the good and hard-working people at
21 BCLC who, we say, did not fail British
22 Columbians. Those are my submissions. Thank
23 you, Mr. Commissioner.

24 THE COMMISSIONER: Thank you, Ms. Mainville.

25 Mr. McGowan, I think we will have one more set

1 of submissions from Mr. Bolton on behalf of
2 Mr. Meilleur.

3 MR. MCGOWAN: Yes, Mr. Commissioner. Would you like
4 to proceed right now with those, or would you
5 like to take a brief adjournment before that?

6 THE COMMISSIONER: I'm happy to proceed right now,
7 but I'm in anyone else's hands if anyone would
8 like a brief adjournment. Why don't we take
9 five minutes. We'll just take a brief
10 adjournment. Thank you.

11 THE REGISTRAR: This hearing is adjourned for a
12 five-minute recess until 1:26 p.m.

13 **(PROCEEDINGS ADJOURNED AT 1:21 P.M.)**

14 **(PROCEEDINGS RECONVENED AT 1:26 P.M.)**

15 THE REGISTRAR: The hearing is resumed.
16 Mr. Commissioner.

17 THE COMMISSIONER: Yes, thank you, Madam Registrar.
18 Yes, Mr. Bolton.

19 **CLOSING SUBMISSIONS FOR LEN MEILLEUR BY MR. BOLTON:**

20 Thank you, Mr. Commissioner. I will make a
21 brief submission on behalf of Len Meilleur, and
22 I'll be referring generally but not specifically
23 to his three affidavits that are filed before
24 the commission and his viva voce testimony and
25 his -- the submission we've made as well.

1 THE COMMISSIONER: Yes.

2 MR. BOLTON: First of all, I just want to say that in
3 terms of chronology and context, Mr. Meilleur
4 had been with the Gaming Policy Enforcement
5 Branch for a few years in the registration
6 division and took the position as the director
7 of -- Executive Director of Compliance in
8 December of 2014, and up to that point the
9 regulator had been engaged in the anti-money
10 laundering campaign with regard to the casinos
11 via a -- what was called the cross-divisional
12 working group under Bill McRae, who did not
13 testify before the commission.

14 Mr. Meilleur had been a part of that
15 committee but had not been actively particularly
16 engaged in the AML issue until he took his new
17 position. And you'll recall that in effect,
18 although not directly because there was
19 restructuring, he replaced Larry Vander Graaf,
20 who has testified extensively before the
21 commission, and took the new position. This was
22 a significant period of time in the sense that,
23 as the evidence before the commission has
24 demonstrated, the potential problem or what
25 appeared to be a problem of some perhaps

1 significant proceeds of crime being laundered
2 through casinos by organized crime groups had --
3 appeared to reach an apex by about the beginning
4 of 2015, and so that -- and secondly, there was
5 a fairly serious dysfunctionality, I'm going to
6 call it, between the regulator, GPEB, and BCLC,
7 and there had been -- they just weren't
8 cooperating and collaborating, as other people
9 have spoken about, as effectively as they ought.

10 Mr. Meilleur was brought into the position
11 of compliance and also in charge of audit and
12 review, and one of his missions was to try to
13 deal with that lack of collaboration that was so
14 necessarily required. He, in my respectful
15 submission, got off to a very good start on
16 that. And you have heard evidence that one of
17 the first things that Mr. Meilleur did, and
18 actually along with the witness who has become a
19 little bit controversial, Mr. Alderson, set up
20 the Exploring Common Ground conference which was
21 held at the BCLC offices on June the 4th of
22 2015. And prophetically I say,
23 Mr. Commissioner, all of the major players were
24 being brought together at that time to deal with
25 the issues of money laundering in the casinos

1 and the appropriate AML strategy. And that
2 included several representatives, Mr. Kroeker,
3 Mr. -- sorry, Mr. Kroeker, Mr. Desmarais, at
4 least, from BCLC and service providers, FINTRAC.
5 RCMP personnel included of course inspector Cal
6 Chrustie, who later shortly after that became
7 the investigator on E-Pirate. And
8 superintendent Dennis Erickson, assistant
9 commissioner Wayne Rideout was there. There was
10 a significant RCMP contingent there. And one of
11 the things that early on Mr. Meilleur and I
12 think Mr. Desmarais in particular certainly
13 agreed upon was that there needed to be a police
14 presence in the police unit dedicated to
15 investigating in casinos the issue of money
16 laundering, and there was not, as we've seen.
17 There had not been really effectively since the
18 previous unit had been disbanded and until the
19 joint JIGIT unit was created in -- early in
20 2016. But that meeting was significant.

21 Now, at the time people were working
22 collaboratively, I think, and trying to work
23 collaborative and trying to bring the police
24 into the casinos to investigate money
25 laundering. You have heard evidence and seen

1 documents, and I refer in part to the affidavit
2 number 3 of Mr. Meilleur which contains two --
3 actually two not for publication legal opinions.
4 And I'm not going to quote from those as a
5 result, but you heard extensive examination and
6 cross-examination by commission counsel and by
7 counsel for various of the participants of
8 Mr. Meilleur with regard to that, and so you've
9 got, I think, uncontroverted evidence that GPEB
10 compliance, in particular Mr. Meilleur and
11 before him I'm sure Mr. Vander Graaf, and that
12 includes the general manager who is Mr. Mazure
13 at the time of Mr. Meilleur's involvement, told
14 in a most clear way that GPEB investigators did
15 not have the authority and could not investigate
16 *Criminal Code* offences of money laundering and
17 loan sharking, for example, in the casinos. And
18 of course that cross-examination showed that
19 Mr. Meilleur had sought a specific written
20 opinion about that. But he was quite clear in
21 his evidence, Mr. Commissioner, that that was
22 not a one-time thing. He'd raised that issue
23 several times, and there had been a consistent
24 point of view at the legal services branch,
25 which were the legal advisors to the regulator,

1 that GPEB did not have the authority to
2 investigate money laundering and should not be
3 interviewing patrons about money laundering and
4 that there was potential civil and criminal
5 jeopardy as well as safety concerns if they were
6 to do that. That was notwithstanding and with a
7 full understanding that they had Special
8 Constable status. The Special Constable status
9 was a limited status that allowed them to
10 investigate and even to forward offences for
11 minor offences under the *Gaming Control Act*, but
12 not anything serious and not *Criminal Code*
13 matters.

14 So what it constituted was a fundamental
15 dilemma because Mr. Meilleur certainly wanted to
16 deal with the money laundering issue and it was
17 first and foremost in his agenda throughout the
18 time that he took the appointment until he
19 concluded in December 2017 and -- but that
20 limitation never changed. And you've heard some
21 evidence that subsequently, and I think
22 currently under General Manager MacLeod and with
23 enforcement director Skrine, they are now with
24 the benefit of the JIGIT unit in place of course
25 able to do some limited interviewing with the

1 police presence and police supervision of
2 patrons. So there has been some growth there.
3 But the foundational role for GPEB is dependent
4 on a police involvement in the investigations.

5 Now, in terms of -- so there was the June
6 Exploring Common Ground meeting where
7 Mr. Meilleur was trying to bring together
8 everyone to collaborate. That was followed very
9 shortly after the -- after that within a month
10 by the E-Pirate investigation, which inspector
11 Cal Chrustie and the FSOC group had launched,
12 and Mr. Meilleur's evidence is that he then
13 dedicated GPEB resources fully to supporting
14 that investigation. That was the opportunity he
15 was waiting for and he took it and ran with it
16 fully.

17 Within the next month, that is to say in
18 August of 2015, two of his investigators,
19 Mr. Ackles and Mr. Barber, generated what's been
20 referred to as the spreadsheet, which was a
21 spreadsheet of cash buy-ins at River Rock Casino
22 during the month of July 2015. And what it
23 revealed -- and I say this, the documents filed
24 as an exhibit of course -- it was dealing only
25 with \$50,000 and higher buy-ins, but even at

1 that, there was some \$20 million of cash buy-ins
2 during that month, some 14 and a half million
3 familiar dollars of those cash buy-ins,
4 Mr. Commissioner, were on the basis of
5 \$20 bills. And notwithstanding a number of
6 theories that have been circulated about hawala
7 or Chinese cash culture, those theories could
8 not explain the use of that many \$20 bills. It
9 appeared to Mr. Meilleur and others to be fairly
10 compelling that there is likely some laundering
11 of proceeds of crime involved in that. And he
12 took that to the Associate Deputy Minister. He
13 was the Acting General Manager at that moment
14 because Mr. Meilleur was on a vacation. But
15 that was a -- that was a pivotal moment, and the
16 minister was so -- the Associate Deputy
17 Minister, Wenezenki-Yolland, was not shocked and
18 upset by that material that she couldn't sleep,
19 according to what she told Mr. Meilleur the next
20 day, and the result of that was the need to do
21 something immediately.

22 And I just say that that was not new data.
23 The spreadsheet was based on Section 86 Reports
24 made by the service providers and through BCLC.
25 But what it did was collate together all that

1 material and created a picture that demanded and
2 commanded attention by the regulator, by BCLC
3 and by government. And Mr. Meilleur did what he
4 could do to bring that about. And one of the
5 things that ensued from that was the MNR report,
6 and again, ensuing from that the consistent
7 theme from the regulator was that BCLC needed to
8 have imposed on service providers either a
9 threshold or a mandatory source of funds
10 inquiry. And ultimately we know that in --
11 after Mr. German made his report in January of
12 2018, after Mr. Meilleur had already left GPEB
13 in retirement, there was a threshold, anything
14 over \$10,000, whether it was cash or a bank
15 draft required a mandatory source of funds
16 inquiry. But that had been sought -- that was
17 sought repeatedly from -- by the regulator. And
18 you've seen many of the missives sent by
19 Mr. Mazure and one I think by Mr. de Jong to
20 BCLC raising that issue.

21 Now, of course criticisms can be made of
22 the failure of government to be more forceful in
23 terms of ensuring that a ministerial directive
24 was understood to be such and was acted upon at
25 an earlier date. But -- and in our respectful

1 submission, Mr. Meilleur did what he could do,
2 did everything he could do throughout his time
3 to bring that about and certainly understood
4 that that needed to be done.

5 Now, the other thing that happened during
6 Mr. Meilleur's time as Executive Director of
7 Compliance of course is the meetings in
8 January -- in March and April of 2016 which
9 resulted in the creation of the joint
10 enforcement unit, JIGIT. And once JIGIT was
11 created, it embedded four initially, and now
12 it's up to eight, investigators from GPEB into
13 that police -- that RCMP unit, and from
14 everything that you've heard, that sounds like a
15 very effective casino policing unit and
16 undoubtedly has a deterrent effect and certainly
17 an investigative effect.

18 That developed when Mr. Meilleur was there.
19 He supported that. He met with the ministerial
20 people. He met with the RCMP and he did
21 everything he could to make sure that was
22 accepted, that proposal, and of course the
23 budgeting came forward by means of a directive
24 from Minister de Jong to BCLC to fund the
25 province's 70 percent share of that.

1 Now, once that occurred, you have heard
2 that -- from Mr. Meilleur and others -- that
3 GPEB devoted a great deal of resources to
4 supporting that team and working on that team,
5 both in intelligence gathering and in terms of
6 investigating and in terms of educating in terms
7 of what the issues are. So that was a very
8 significant matter.

9 And once -- since JIGIT has been in place,
10 the criticism that GPEB investigators did not
11 interview patrons of course is completely by the
12 wayside in the sense that they either didn't
13 need to because they were supporting the police
14 in terms of intelligence going into those
15 investigations and interviews or they were
16 present and now they're able to do some of them
17 too and that they're moving to that model in the
18 future according to the evidence given by Skrine
19 and MacLeod. But I think it's very significant
20 that those steps were taken and that since the
21 spring of 2016 that issue has really been dealt
22 with.

23 There has been a tendency, I think -- there
24 is a tendency on the part of some parties to
25 this proceeding to try to deflect criticism, if

1 you will, by suggesting that oh, the regulator
2 didn't do anything. Well, in my respectful
3 submission, that just isn't accurate. It isn't
4 accurate in terms of what Mr. Meilleur did. It
5 isn't accurate in terms of how he dealt with the
6 legal limits that his authority had apparently
7 and the steps he took to nevertheless combat
8 money laundering in the casinos.

9 I don't propose to deal -- you know, we had
10 a long day here to deal at length with any of
11 those things, but I commend to you not only
12 Mr. Meilleur's final submission and his
13 affidavit in evidence but also the provincial
14 government's submissions which are very
15 extensive on this whole issue, and they, I
16 think, very much corroborate those things that I
17 am saying in respect of Mr. Meilleur.

18 He is grateful for the experience he's had
19 with GPEB and he is very grateful for the
20 contribution, significant contributions the RCMP
21 have made to the success of the anti-money
22 laundering efforts of the regulator, and he
23 recognizes -- obviously we all recognize that
24 Mr. Kroeker has done some good things.
25 Mr. Desmarais is a very experienced AML person

1 and has also done some very good things and
2 certainly had an instrumental role in following
3 up with the RCMP to bring about the E-Pirate
4 investigation. But it has been the view of
5 Mr. Meilleur consistently during his time there
6 that source of funds and banning patrons was not
7 a sufficient solution to the problem and was not
8 an answer to the money laundering concerns and
9 that really it was needed to go further and to
10 deal with source of funds on -- not a
11 prescriptive program but something -- some sort
12 of a blend where there's a threshold at which a
13 source of funds inquiry needs to be undertaken.
14 Of course that's been done now.

15 So finally I would just say in summary
16 there have been many substantial gains now.
17 There have been amendments to the act. There
18 have been additional manpower given to GPEB so
19 that now casinos are staffed not 24/7, but
20 they're staffed by GPEB investigators more
21 often, greater hours and important hours. That
22 was something that Mr. Meilleur had proposed but
23 it was not feasible, budgetary constraints did
24 not make it feasible at the time, but when it
25 was started, it was urged when he was there and

1 is now very much underway. So there have been a
2 lot of significant achievements and Mr. Meilleur
3 does not purport to take credit for all those
4 achievements, but he says he did a very
5 significant part in trying to bring about those
6 things, and he is pleased to see that progress
7 has been made and particularly in the
8 collaboration amongst the various players.

9 Mr. Commissioner, thank you for the
10 opportunity to address you. Those are the
11 submissions I wish to make. Any other matters I
12 just rely on the affidavits provided by
13 Mr. Meilleur.

14 THE COMMISSIONER: Thank you, Mr. Bolton. I
15 appreciate your involvement.

16 Mr. McGowan, we're at a point where
17 ordinarily I would adjourn until tomorrow
18 morning, but I'm looking to you to let me know
19 if you think there's some benefit in carrying on
20 with one or two more submissions in order to
21 enable us to finish in a timely way tomorrow.

22 MR. MCGOWAN: No, Mr. Commissioner. I think that we
23 are in a good place to adjourn now and commence
24 tomorrow morning at 9:30.

25 THE COMMISSIONER: All right. Thank you. We'll

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adjourn until 9:30 tomorrow morning.

THE REGISTRAR: The hearing is now adjourned until
October 19th, 2021 at 9:30 a.m.

(PROCEEDINGS ADJOURNED AT 1:52 P.M. TO OCTOBER 19, 2021)