

**PROCEEDINGS AT HEARING  
OF  
OCTOBER 19, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**October 19, 2021**

**(Via Videoconference)**

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

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

THE COMMISSIONER: Thank you, Madam Registrar. Are you able to see me?

MR. MCGOWAN: Yes, Mr. Commissioner. We can see and hear you.

THE COMMISSIONER: All right. Thank you.

I think we're set now to commence with

Mr. DelBigio on behalf of Mr. Jin.

MR. MCGOWAN: That's correct.

THE COMMISSIONER: All right. Thank you.

Mr. DelBigio.

**CLOSING SUBMISSIONS FOR PAUL JIN BY MR. DELBIGIO:**

Thank you. I'd like to begin by thanking Mr. Martland for confirming the amount of allotted time we have this morning. I probably won't use all of the allotted time, and that's the silver lining. But every silver lining has a touch of grey, and I do have some remarks, and that perhaps is the touch of grey. After those remarks, I'll swivel my chair away and look away for the last time.

1           We know that the commission investigators  
2           have obtained information. Some and perhaps a  
3           lot of that information has been obtained  
4           through compulsion powers. Mr. Jin does not  
5           know how much. Mr. Jin does not know what  
6           commission counsel -- Mr. Jin doesn't know what  
7           commission counsel have not put forward. He  
8           only knows what has been put forward into the  
9           public forum. He also doesn't know what other  
10          counsel or participants have.

11           A prior ruling meant that Mr. Jin has less  
12          information than others and perhaps much less.  
13          Now, in my remarks a moment ago I made reference  
14          to looking away, and some jokes have been made  
15          about that, me turning to look out the window,  
16          and the media has remarked upon that. But the  
17          fact is that Mr. Jin has had access to much less  
18          information than others, and that's a ruling  
19          that you, Mr. Commissioner, made, and that's a  
20          ruling that I accept, but it is a fact. And as  
21          against that -- and I'll make some general  
22          comments or remarks about the evidence.

23           As you can consider the evidence and as you  
24          consider input from commission counsel, I urge  
25          you to consider the quality of the evidence.

1           And I refer you, Mr. Commissioner, to the  
2           hearsay ruling that you made in relation to  
3           Mr. Alderson, and you disallowed evidence that  
4           was Mr. Alderson's own notes. And the  
5           commission made the ruling because the  
6           commission -- it was aware of the weaknesses,  
7           the recognized weaknesses, the well-recognized  
8           weaknesses associated with hearsay evidence. It  
9           can be dangerous to rely upon. So I urge you to  
10          insist upon reliable evidence that has been  
11          fully tested in cross-examination before making  
12          any finding or recommendation.

13                 And as commission counsel are assisting you  
14          with their contributions, I urge you to ask,  
15          with respect to any particular piece of evidence  
16          that is referred to, does the Alderson hearsay  
17          principle apply and is it safe to rely upon the  
18          evidence that is being pointed to.

19          THE COMMISSIONER: Mr. DelBigio, as I recall it, they  
20          weren't Mr. Alderson's notes that were at issue;  
21          they were some other third party's notes that  
22          were at issue in the ruling which I made, but  
23          maybe I'm referencing another ruling. I'm not  
24          sure.

25          MR. DELBIGIO: Well, Mr. Commissioner, I'll step back

1           and say this: that there was clearly a hearsay  
2           ruling that was made and a recognition of the  
3           importance of hearsay, and it is that that I'll  
4           ask you to be guided by as you look at the  
5           evidence, as you consider the findings and  
6           recommendations that you might make.

7           THE COMMISSIONER: Yes. All right. Thank you.

8           MR. DELBIGIO: Now, these proceedings have lasted  
9           many, many days. There are about eight to ten  
10          days of evidence with respect to enforcement  
11          issues. There are many witnesses that were  
12          called. There are about 10 days, as I counted  
13          them, of evidence with respect to other  
14          jurisdictions. New Zealand, Manitoba civil  
15          forfeiture and a US prosecutor spoke about asset  
16          forfeiture.

17                 And so the commission counsel saw fit to  
18          call evidence from New Zealand and Holland, but  
19          not a single person, not a single witness, not a  
20          single panel was called with respect to charter  
21          issues and concerns. That is what commission  
22          counsel chose to present in these public  
23          hearings, and that's what commission counsel  
24          regarded as important to advance the commission  
25          mandate.

1           On the other side of that, on the flip side  
2           of that, it is apparent that giving a day or two  
3           to charter issues was regarded by commission  
4           counsel as less important to the inquiry. That  
5           was a choice of commission counsel. It's a  
6           choice that commission counsel was permitted to  
7           make, but it has created an unevenness. This  
8           commission has heard from investigators that --  
9           about -- and who have spoken about the charter.  
10          The charter makes investigations difficult.  
11          Investigators need more information. There's  
12          more information sharing that is needed. More  
13          tools are required.

14                 And just as -- if you ask a carpenter, for  
15                 example, whether they need more hammers and  
16                 saws, they will likely answer yes. If you ask  
17                 law enforcement officers whether they need more  
18                 tools and fewer restrictions, the answer is  
19                 going to be obvious. They will answer yes.

20                 But the question, which I submit is looming  
21                 large, is is there any evidence that more tools  
22                 for law enforcement, more law enforcement and  
23                 fewer impediments through the rights of targets  
24                 will result in less crime and less proceeds of  
25                 crime. And when I phrase the question -- when I



1 not advocating a position, but nor are they  
2 mute, and at the end of this public hearing, at  
3 the end of the public component of these  
4 proceedings, commission counsel have an ongoing  
5 role to play. And in an earlier ruling from May  
6 the 5th, 2021, you, Mr. Commissioner, set out  
7 the role of commission counsel in the next  
8 non-public phase of the commission. And you  
9 held that you see no principled reason why it is  
10 necessary or desirable to preclude commission  
11 counsel from making useful contributions after  
12 the close of evidentiary hearings.

13 Now, I urge that if commission counsel are  
14 making contributions and if in those  
15 contributions they suggest that more  
16 enforcement, more tools for law enforcement,  
17 more forfeiture, more jail, principles such as  
18 that, will result in less complacency -- and I  
19 draw that language of "less complacency" from  
20 your opening remarks, Mr. Commissioner -- I ask  
21 you to question that. If commission counsel  
22 and -- the commission in your introductory  
23 remarks wrote that:

24 "Money laundering is akin to the  
25 transmission of a serious, contagious

1                   disease."

2                   But I urge that evidence that might be  
3                   potentially advanced by commission counsel to  
4                   support that, that it be scrutinized, that it be  
5                   scrutinized on a strict application of the  
6                   Alderson hearsay principle.

7                   I urge you, despite those strong remarks in  
8                   the introductory remarks that you made, to not  
9                   automatically or easily find that those remarks  
10                  are completely substantiated by evidence. I  
11                  urge you, Mr. Commissioner, to entertain the  
12                  idea that the loss of privacy through too much  
13                  information collection, through the interference  
14                  with charter rights also leads to the erosion of  
15                  well-being. And, again, I draw that phrase  
16                  "erosion of well-being" from your introductory  
17                  remarks.

18                  Commission lawyers chose not to call  
19                  evidence about the charter, but its importance,  
20                  I submit, is self-evident. I urge you to be  
21                  careful of any contribution from a commission  
22                  lawyer that might suggest limitation upon  
23                  charter rights or privacy. Be careful about  
24                  contributions or suggestions that more state  
25                  power equals more well-being. It's easy and

1           obvious to conclude that more information made  
2           available to law enforcement will result in more  
3           enforcement procedures, but we don't permit  
4           police to search cars randomly. We don't  
5           require pedestrians to empty pockets or require  
6           people to answer questions simply upon the  
7           demand of a police officer. All of that would  
8           result in more prosecutions, but we don't allow  
9           it. It is antithetical to democratic values in  
10          Canada to set aside charter considerations and  
11          privacy protections in favour of law enforcement  
12          without great care.

13                    I don't know if commission investigators  
14                    expended any resources on charter issues, but I  
15                    do know that commission counsel chose to not  
16                    call any witnesses with respect to the charter  
17                    during the public hearings. I urge you,  
18                    Mr. Commissioner, to resist the pattern and the  
19                    theme that is revealed through the absence of  
20                    that charter evidence that the charter is not  
21                    important. I urge you to resist the suggestion  
22                    that charter simply gets in the way and makes  
23                    investigations too difficult. And if commission  
24                    lawyers suggest through their contributions that  
25                    certain additional powers for law enforcement or

1 civil forfeiture, for example, might be charter  
2 compliant, I urge you to resist that.

3 Now, particularly some constitutional  
4 issues with respect to civil forfeiture are  
5 presently before the courts in British Columbia,  
6 and those for that reason should not be  
7 commented upon. Now, I know that commission  
8 investigators have been willing to investigate  
9 some matters that are before the courts, and  
10 that's specifically with respect to some of  
11 Mr. Jin's matters. But if commission lawyers  
12 suggest evidence or make contributions to you  
13 which suggest that civil forfeiture is useful  
14 because it makes criminal law easier, I urge you  
15 to resist that.

16 If it is -- if a contribution to you through  
17 a commission lawyer is that law enforcement and  
18 the use of criminal law power should not --  
19 should be used more often in order to advance  
20 civil forfeiture because of the shared goals of  
21 criminal law and civil forfeiture, I urge you to  
22 resist the temptation that the law enforcement  
23 and civil forfeiture should easily or commonly  
24 work hand in hand.

25 Now, as the -- as you are aware,

1           Mr. Commissioner, Mr. Jin has ongoing court  
2           proceedings. As you're also aware, commission  
3           investigators specifically obtained information  
4           and prepared a report with respect to some of  
5           those proceedings. His real estate. No  
6           cross-examination was permitted upon that  
7           report. Now, it might be because there are  
8           ongoing court proceedings which overlap with  
9           some of the work that you are doing,  
10          Mr. Commissioner. It might be that that report  
11          might be used by some party in other  
12          proceedings. And it might be then that  
13          commission investigators who prepared the report  
14          might be cross-examined upon that report. But  
15          for now it's an exhibit in these proceedings  
16          based upon the commission investigators'  
17          efforts.

18                 The commission investigators utilized  
19                 compulsion powers to obtain information about  
20                 Mr. Jin. Mr. Jin doesn't know exactly what has  
21                 been compelled or who has been compelled. He  
22                 doesn't know what questions commission  
23                 investigators have asked or what answers have  
24                 been compelled. It may be that just as  
25                 commission investigators conducted an

1 investigation in relation to ongoing civil  
2 proceedings that Mr. Jin is involved in as it  
3 relates to real estate, it might be that  
4 commission investigators have conducted  
5 investigations into ongoing civil forfeiture as  
6 well. Mr. Jin simply doesn't know. Mr. Jin  
7 only knows what was publicly presented. And  
8 what else exists, what else was done, is at  
9 present a secret with respect to Mr. Jin.

10 Evidence tells us that there is an ongoing  
11 criminal investigation. We know that there's  
12 outstanding civil forfeiture issues that Mr. Jin  
13 is involved in. We know that the commission  
14 lawyers called the Director of Civil Forfeiture  
15 as a witness. We know that one issue that you,  
16 Mr. Commissioner, are considering is whether to  
17 give more powers to the Director of Civil  
18 Forfeiture.

19 Now, Mr. Jin doesn't know what information  
20 the director was given access to. Mr. Jin  
21 equally doesn't know what information commission  
22 investigators might at some point or for some  
23 reason pass along to the police. Mr. Jin in  
24 those circumstances cannot comment upon  
25 substantive issues which are before this

1           commission and which relate to him without a  
2           significant risk of prejudice to his other  
3           cases.

4           But I will make one remark with respect to  
5           E-Pirate. The commission has heard that that  
6           was a massive investigation. It was  
7           long-lasting. The police used many resources.  
8           There were many agencies that were involved in  
9           that investigation. It sounds like the police  
10          used all of their tools. Mr. Jin was  
11          investigated, his activities were closely  
12          examined and scrutinized and he was never  
13          charged. Despite that investigation, he was  
14          never charged.

15          Now, what the commission investigators  
16          might know about E-Pirate is not known, or at  
17          least it's not known to Mr. Jin. Very little  
18          evidence was presented by commission counsel to  
19          the public hearing with respect to E-Pirate.  
20          But Mr. Jin was never charged. Despite that  
21          effort of the police, there was simply not  
22          enough evidence to charge him. And for those  
23          who were charged, a stay of proceedings was  
24          entered. There's no information as to why there  
25          was a -- no public information as to why there

1           was a stay of proceedings, but it might be that  
2           the Crown simply decided that there was  
3           insufficient evidence to justify a prosecution.  
4           The commission based upon the public evidence  
5           simply doesn't know, but the insufficiency of  
6           the evidence is simply -- is one possible basis  
7           upon which there might have been a stay of  
8           proceedings.

9           So I don't know -- Mr. Jin does not know  
10          the extent of the commission investigation  
11          against him. And it may be that there will be  
12          more transparency with respect to that in  
13          another day, in another context. It may be that  
14          the observations that were made of Mr. Jin at  
15          the casinos triggered regulatory questions, but  
16          cash was allowed. No gamblers with cash were  
17          ever arrested for the proceeds of crime or being  
18          in the possession of the proceeds of crime. It  
19          will be others -- for others to figure out  
20          whether cash and gambling go hand in hand or  
21          whether cash and gambling should go in hand.  
22          That's for others. My concern is with respect  
23          to Mr. Jin. And in the circumstances, the risk  
24          of prejudice with respect to his other  
25          proceedings prevents me from making any more

1                   comments that I now have.

2                   Those are my submissions. Thank you.

3           THE COMMISSIONER: Thank you, Mr. DelBigio.

4                   I'll now call on Mr. Senkpiel on behalf of  
5                   Mr. Heed, who has been allocated 30 minutes.

6           **CLOSING SUBMISSIONS FOR KASH HEED BY MR. SENKPIEL:**

7                   Thank you, Mr. Commissioner. As you know,  
8                   Mr. Heed's standing here was limited, and it was  
9                   provided or granted to address a fairly narrow  
10                  issue. And so I have no intention of wading  
11                  into the broader issues. I'm just going to  
12                  address the specific issue that has arisen.

13                  Given the point in time when Mr. Heed was  
14                  in government and his role when there,  
15                  Mr. Heed's participation in these proceedings  
16                  should have been unnecessary. In fact on  
17                  January 23rd, 2020, he was interviewed by  
18                  commission counsel and was told it was not  
19                  likely that he would be called as a witness.

20                  His evidence became necessary, however,  
21                  only when Mr. Pinnock gave some surprising  
22                  evidence on November 5 and 6 about a lunch he  
23                  had with Mr. Heed in 2009. Mr. Pinnock alleged  
24                  that Mr. Heed made certain statements during  
25                  that lunch while sitting minister. He also said

1           that he had surreptitiously recorded  
2           conversations with Mr. Heed in 2018, which he  
3           said confirmed everything and expanded upon the  
4           2009 statements. As I'm going to set out in a  
5           bit more detail below, Mr. Pinnock's evidence  
6           about the alleged 2009 conversation and in fact  
7           about the 2018 recordings, despite the fact that  
8           he has them, was at best mistaken and more  
9           likely untruthful.

10           I'm going to submit that Mr. Pinnock proved  
11           himself to be unreliable, inconsistent and not  
12           credible. Now, Mr. Jaffe began his submissions  
13           yesterday asking -- and in fairness, he was  
14           addressing both Mr. Alderson and Mr. Pinnock,  
15           but I'm going to deal with only Mr. Pinnock --  
16           but asking him why would Mr. Pinnock say some of  
17           the things he said if they weren't true. He  
18           suggested that he was doing so at his own -- at  
19           the expense of his own career potential, and  
20           simply there's no reason that he would sort of  
21           take that burden on.

22           Mr. Heed's written submissions dealt with  
23           Mr. Pinnock's motivations at the end, but  
24           because Mr. Jaffe started with it, I will as  
25           well. There are in my submission a number of

1 places in Mr. Pinnock's evidence that may shed  
2 some light on why his evidence is so  
3 problematic. And I say it's not that he was  
4 giving evidence at the expense of his career  
5 potential, but that he was giving evidence in an  
6 attempt to try to rehabilitate his reputation.

7 It's clear that Mr. Pinnock holds a negative  
8 view of certain former members of the  
9 government: Mr. Coleman mainly and the RCMP.  
10 He admitted that he was pretty hurt and angry in  
11 '07 and '08. A claim that he was no longer  
12 angry. He thought that the review process that  
13 had led to him leaving the RCMP had been  
14 weaponized against him. And in one of the  
15 recordings he said to Mr. Heed:

16 "I was so [f'ing] beaten up when I left,  
17 looking at my old notebooks ... and  
18 looking at that stack of big black  
19 notebooks, it was killing me. I said, I  
20 should be calling out that material ...  
21 and I should be suing these guys for doing  
22 this to me, but it was so draining and so  
23 energy-sucking."

24 He admitted he was bothered by how Mr. Coleman  
25 had allegedly treated his wife, and he thought

1           Mr. Coleman had intentionally tried to assault  
2           him with a handshake. He told Mr. Heed about  
3           this in one of the recordings and said that:

4                     "If it hadn't been like a fundraiser I  
5                     wouldn't have let him get away with it.

6                     But I just thought okay, maybe we'll chat  
7                     one day."

8           It was put to Mr. Pinnock as well that whether  
9           it was animosity or resentment, he was unhappy  
10          with the way he believed that one or more  
11          members of the liberals had behaved vis-à-vis  
12          someone close to him. He admitted he was  
13          disappointed. And not only did he have strong  
14          feelings about certain individuals and how he  
15          had been treated, but he had strong feelings  
16          about his role or more particularly his lack of  
17          a role in the issues related to money  
18          laundering. Especially as they became more  
19          prominent and he was not centre stage.

20                    He was bothered, for example, when the  
21                    German report came out and he had not been  
22                    consulted. He didn't want to admit this at  
23                    first and tried to deflect, saying that he was  
24                    merely curious as to why he wasn't interviewed,  
25                    but he was taken to a version of a document he

1 prepared unprompted -- and I'll come back to  
2 this later -- where he said that he was  
3 disappointed. Mr. Pinnock took issue with  
4 Mr. German's conclusions that BC casinos were  
5 unwittingly serving as laundromats. He thought  
6 the conduct was intentional, and he said this --  
7 he said:

8 "I have concluded that now retired senior  
9 RCMP officers, BCLC personnel, former ADMs  
10 within the ... government and Rich Coleman  
11 from the BC Liberals ... through their  
12 actions, inactions and wilful blindness,  
13 facilitated the money laundering and  
14 fentanyl crisis."

15 After the German report had come out and he  
16 hadn't been consulted, he gave an interview for  
17 *Global TV*, where he said that he would not name  
18 names at that time. This was shortly before  
19 Mr. Heed called him, which gave rise to the  
20 first recording. And he said he would not name  
21 names at that time, but that he was very much  
22 looking forward to being subpoenaed so that he  
23 could give evidence at a public inquiry. That  
24 may be the first time anyone in history has ever  
25 looked forward to being subpoenaed.

1           Because of his excitement, he sat down to  
2           prepare what has been referred to as his  
3           personal will-say. He prepared it in 2019 and  
4           made changes to it twice, in 2019 and 2020,  
5           inserting new information along the way. No one  
6           asked him to do this, but he says the purpose  
7           was to set out his observations, recollections  
8           and conclusions about the events that he thought  
9           might be relevant to this inquiry. He says he  
10          was trying to be truthful, but there's a certain  
11          narrative quality to the will-say with headings  
12          like "Prologue," "The Game" and "Epilogue." And  
13          he included a section where he says under oath  
14          "I say" before setting out various  
15          recollections, including a number that relate to  
16          what he alleges Mr. Heed said.

17                 Mr. Pinnock, having drafted this will-say,  
18                 sought to get standing at this inquiry, and in  
19                 your ruling on his standing, you noted that  
20                 Mr. Pinnock submitted that he was right and that  
21                 others within the RCMP, BCLC, government and  
22                 GPEB knew or were willfully blind about this,  
23                 and in that sense he submits his reputational  
24                 interest may be engaged as the inquiry may  
25                 vindicate him. Mr. Pinnock accepted under cross

1           that that was representative of the way he felt.

2           It is submitted that it is clear that  
3           Mr. Pinnock feels like he has been wronged, that  
4           he feels that he is right and others are wrong  
5           and corrupt and that this inquiry would somehow  
6           provide him a platform to vindicate himself  
7           after so many years of difficulty. And so I  
8           submit that he tried to address his credibility  
9           and reputational issues by cloaking himself in  
10          the credibility and reputation of someone else.

11          And you saw Mr. Jaffe try to do that  
12          yesterday, making reference, conflating issues  
13          from '09 and 2018, and referencing the fact that  
14          Mr. Heed is authoritative and compelling and  
15          Mr. Heed was the instigator for Mr. Alderson and  
16          Mr. Pinnock. The problem is is that whether  
17          intentionally or unintentionally -- and it's  
18          hard to see it as being mistaken evidence, but  
19          there's a quality to his evidence and how it's  
20          told that's troubling, but he made up a story  
21          about a lunch in 2009 in which Mr. Heed, a  
22          sitting minister, allegedly said that  
23          Mr. Pinnock was right. And to top it off, he  
24          produced surreptitious recordings that he  
25          claimed confirmed everything and expanded upon

1           it.

2                   The problem is is that the 2009  
3           conversation couldn't have happened and didn't  
4           happen as alleged and the 2018 recordings don't  
5           say what Mr. Pinnock says they say. So the  
6           question is what is the issue as between  
7           Mr. Pinnock and Mr. Heed. As you noted in  
8           ruling 16, the critical issue with respect to  
9           the tapes is whether they either corroborate or  
10          undermine Mr. Pinnock's evidence of the  
11          contested 2009 conversation. And so I'm going  
12          to start there.

13                   Mr. Jaffe yesterday -- and not seemingly  
14          distinguishing between very distinct time  
15          periods, 2009 when Mr. Heed was a minister, and  
16          2018 when he had long been out of office -- said  
17          it's clear that Mr. Heed knew and understood  
18          what had and had not happened. And I say that  
19          that is not so. When Mr. Heed was in  
20          government, it was from 2009 to 2013. He only  
21          served the one term. He had no public role in  
22          government after that date.

23                   Early in his term he was the Solicitor  
24          General and Minister of Public Safety, which  
25          came to an end in early 2010. He had no

1 responsibility for gaming. His ministerial  
2 assistant did not have any direct  
3 responsibilities for gaming. He was shown  
4 various documents -- or a document where it was  
5 shown that the *Gaming Control Act* was under a  
6 different ministry, and they confirmed that he  
7 didn't receive any briefings from GPEB, he  
8 didn't receive any briefings from BCLC, he did  
9 not issue any service letters or mandate letters  
10 to BCLC during that period. And he gave  
11 evidence about what the priorities were as  
12 Solicitor General and what was going on. And it  
13 was a very busy time.

14 And aside from a couple of discrete issues,  
15 which are addressed in the closing submission,  
16 Mr. Heed's evidence was this: the issue of  
17 revenue from casinos was not discussed or  
18 addressed while he was in cabinet, he does not  
19 remember anything about the topic of money  
20 laundering in casinos coming up while he was SG,  
21 he did not have any awareness while SG that  
22 money laundering in casinos was an emergent  
23 problem, he did not have first-hand knowledge of  
24 money laundering in casinos while in government  
25 and does not remember discussions about money

1           laundrying while he was in government. While he  
2           was Solicitor General, the issue of money  
3           laundrying was never brought to his attention in  
4           any formal document or briefing or even in  
5           discussion amongst the government ministers.

6           He was not given briefing notes or materials  
7           that related to casinos, gaming or gaming  
8           enforcement type issues. He was not while SG  
9           aware of money laundrying in casinos and it was  
10          not brought to his attention. He didn't talk to  
11          Rich Coleman about gaming enforcement issues,  
12          and he had no knowledge and has no knowledge --  
13          first-hand knowledge of any government  
14          officials, elected or unelected, turning a blind  
15          eye to money laundrying activity. That was the  
16          state of Mr. Heed's knowledge and experience for  
17          the entirety of his term in public office from  
18          2009 to 2013.

19          Very early in that term he had a lunch with  
20          Fred Pinnock. They had known each other for a  
21          long time. Their relationship was social, not  
22          work based. And while Mr. Pinnock couldn't  
23          recall if it was in Vancouver, Victoria or over  
24          coffee or a lunch, Mr. Heed recalled it was a  
25          lunch meeting at the Hotel Grand, which is where

1           he stayed when he was in Victoria. And Mr. Heed  
2           and Mr. Pinnock do agree on certain things.  
3           They agree that the lunch was mostly catching up  
4           and discussing personal issues. They agree that  
5           the discussion about an interview Mr. Pinnock  
6           gave before the lunch occupied maybe the last  
7           five minutes, and as Mr. Pinnock says, they  
8           didn't get into much detail on that theme. And  
9           Mr. Heed's evidence is that Mr. Pinnock went on  
10          for about five minutes and talked about how he  
11          was more or less poorly treated by the RCMP with  
12          respect to his position in gaming enforcement  
13          team.

14                 He -- Mr. Heed described Mr. Pinnock as  
15          going on for almost five minutes straight  
16          talking about the disdain he had for the RCMP.  
17          Mr. Heed says that Mr. Pinnock talked about how  
18          the positions were not filled and who he  
19          reported to. Mr. Heed says that he asked two  
20          questions about the 13 positions and a question  
21          about what the link between auto crime and  
22          gaming was given a connection that he didn't  
23          understand. And Mr. Heed was very clear when  
24          asked by Mr. Martland that he had said none of  
25          the things that Mr. Pinnock alleges he said in

1                   2009. And as I've just taken you through, he  
2                   didn't have the ability to say them. He didn't  
3                   have the experience or the knowledge to say them  
4                   in 2009.

5                   Mr. Heed left office in 2013, and after  
6                   that he had no direct involvement -- and this  
7                   was brought out in questioning from the AG -- no  
8                   direct involvement in internal work conducted by  
9                   the Ministry of the Attorney General or the  
10                  province or in decision-making in regard to  
11                  matters within the purview of the Ministry of  
12                  the AG. What Mr. Heed did do was form a  
13                  consulting company, advising companies on drug  
14                  policies, and from 2016 to 2017 he hosted a  
15                  radio talk show from Monday to Thursday for  
16                  three hours a day discussing issues like  
17                  politics, policing and gang issues.

18                 He continued to advocate publicly on police  
19                 and drug policy, gangs and guns and police  
20                 reforms. Through this work he expressed  
21                 informed opinions on a broad range of topics and  
22                 issues. He also taught criminology and criminal  
23                 justice at three colleges and universities.

24                 Given this background, as I said, Mr. Heed  
25                 should not have needed to have been involved in

1           this. The problems arose, however, on  
2           November 5 and 6. Mr. Pinnock during his  
3           testimony on November 5, there was a technical  
4           glitch that led to a break, and during that  
5           break he spoke to his lawyer, and he came back  
6           and testified that his lawyer told him that he  
7           should clarify or provide clarity on two points.  
8           The first thing that he apparently had to  
9           clarify was the incident in 2010, when  
10          Mr. Pinnock says that Mr. Coleman tried to crush  
11          his hand. The second point that had to be  
12          clarified was that apparently Mr. Pinnock had  
13          not responded adequately to counsel for Canada  
14          when he was canvassing Mr. Pinnock's  
15          recollection of the 2009 conversation with  
16          Mr. Heed. As such, Mr. Pinnock added that:  
17                 "Kash Heed confirmed everything that he  
18                 said during that encounter in 2009, and he  
19                 expanded on it in greater detail in my  
20                 audio recorded conversation with him on  
21                 the 10th of July 2018, [9] years later."  
22          He confirmed this again under cross-examination.  
23          Not surprisingly, Mr. Pinnock's testimony about  
24          Mr. Coleman and Mr. Heed generated quite a lot  
25          of media attention, which Mr. Pinnock



1                   them. After thousands of handshakes over  
2                   the course of my life, I have experienced  
3                   this one deliberate attempt to injure me.  
4                   I have concluded that Mr. Coleman's act of  
5                   physical aggression towards me related  
6                   directly to my statements around  
7                   organization crime, organizational  
8                   criminal activity within casinos and my  
9                   unwillingness to placate him."

10                   Only after this passage was put to him did he  
11                   admit that it was a belief he held.

12                   With respect to the 2018 recordings,  
13                   Mr. Heed spoke to Mr. Pinnock on the telephone  
14                   on July 10, 2018. This conversation took place  
15                   after Mr. Pinnock had given his *Global TV*  
16                   interview and it took place after the German  
17                   report had been released. Mr. Heed called him  
18                   in part because he was concerned about his  
19                   health and well-being.

20                   Mr. Heed also had lunch with Mr. Pinnock on  
21                   September 7, 2018, at the Cactus Club, and  
22                   Mr. Heed spoke to Mr. Pinnock on the telephone  
23                   on December 31, 2018. This was a conversation  
24                   on New Year's, and Mr. Heed was trying to tell  
25                   Mr. Pinnock about a potential opportunity to get

1                   involved in an investigative report with the *W5*.

2                   Each of these conversations took place  
3                   after Mr. Heed had left public office five years  
4                   later, after Mr. Heed had spent time as a radio  
5                   show host dealing with public issues, after the  
6                   German report had been released, after  
7                   Mr. Pinnock had given an interview to *Global TV*  
8                   and after Mr. Heed had made his own public  
9                   comments about whether there should be an  
10                  inquiry in BC about money laundering. These  
11                  conversations were secretly recorded by  
12                  Mr. Pinnock. Mr. Heed first learned about them  
13                  the day before he was first interviewed by  
14                  commission counsel.

15                  And in response to a question from  
16                  Mr. Martland, Mr. Heed said that he viewed these  
17                  recordings as an absolute breach of trust by  
18                  someone he thought was a long-time friend and  
19                  associate in policing. He said that Mr. Pinnock  
20                  ought to have known what could or would be the  
21                  ramifications of his actions and of recording  
22                  our conversation when you come from a police  
23                  background, especially on another former police  
24                  officer.

25                  And I'm just going to pause here to note,

1           the transcripts say what the transcripts say,  
2           but they have to be read properly and they have  
3           to be read in context, and they can't be garbled  
4           in the way that both Mr. Pinnock and Mr. Jaffe  
5           have done.

6           So the first point is that 2018 is not 2009.  
7           Mr. Jaffe said something like well, if Mr. Heed  
8           said X in 2018, why didn't he say it in 2009?  
9           He also said something to the effect of,  
10          Mr. Heed is just one person; he's the same guy  
11          in both time periods. And while I don't  
12          disagree with that as a matter of science, the  
13          distinction between -- or the failure to draw a  
14          distinction between 2008 and -- 2018 and 2009 is  
15          the central problem with Mr. Pinnock's  
16          testimony, Mr. Jaffe's submissions and some of  
17          the media reporting on this unfortunate episode.

18          As you did in your ruling and as  
19          Mr. Martland did in his questioning, Mr. Heed  
20          drew a clear distinction between what took place  
21          in the conversation in 2009 while he was serving  
22          in government as a sitting minister and his  
23          personal opinions set out in 2018 recordings  
24          when he was a regular citizen and had no  
25          obligations or responsibilities. Except as

1           noted below, the topics discussed in 2018 were  
2           personal opinions expressed at that time under  
3           the understanding that there were not  
4           surreptitious recordings going on, they were  
5           personal opinions well after the fact and they  
6           were not based on any first-hand knowledge or  
7           experience from his time in policing or  
8           government. They were personal opinions about  
9           stuff that he had heard mostly through media  
10          sources.

11                 Commission counsel's submission on the  
12           transcripts motion actually states that they  
13           contain significant portions that involve  
14           discussions about people and cases and  
15           situations that are not related to the mandate  
16           of the commission nor the topics and issues  
17           being addressed through evidence in this inquiry  
18           and that contain abundant discussion of third  
19           parties that is gossip, catching up or shooting  
20           the breeze about various cases and situations,  
21           most of them widely reported in the media.

22                 Now, there are a couple exceptions to that,  
23           but those exceptions need to be read properly.  
24           Words matter. And while Mr. Jaffe made a  
25           submission that people have been dancing around

1           who said what and you don't really need to do  
2           that because it's not a contest between  
3           Mr. Pinnock and others, words do matter, and  
4           because Mr. Pinnock has spent two days on the  
5           stand giving evidence that has potentially  
6           damaging reputational effects for others, the  
7           words matter. And so I'm going to now take you  
8           through some of that.

9           Mr. Pinnock was candid that he has no notes  
10          or recordings of the 2009 conversation. In fact  
11          he has no notes of anything preceding 2011.  
12          Despite this, he said certain things were  
13          "indelibly etched" in his memory such that he  
14          feels recollection is not an issue. One of  
15          those things is the Coleman handshake, and the  
16          comments he alleges Mr. Heed made in 2009 are  
17          another. And Mr. Heed actually volunteered that  
18          he was absolutely gobsmacked by what Kash Heed  
19          told him that day, and he was gobsmacked by what  
20          a sitting minister told him in that brief  
21          discussion.

22          And one of the things that he said Mr. Heed  
23          told him was that four RCMP officers, who were  
24          apparently named, were involved in a game and  
25          were puppets for Coleman. Mr. Pinnock's

1 evidence and memory were of course tested. He  
2 was taken to his personal will-say, which was  
3 the first time he put pen to paper to write down  
4 what he recalled during that conversation with  
5 Mr. Heed in 2009. That's 10 years later, was  
6 the first time he tried to make a note. He sat  
7 down to do that after the release of the German  
8 report, after Mr. Heed had publicly commented on  
9 the potential of a public inquiry, after his  
10 *Global TV* interview and after each of the three  
11 recorded conversations in 2018.

12 And while Mr. McGowan suggested to  
13 Mr. Pinnock that the will-say was a summary,  
14 Mr. Pinnock actually used quotation marks to  
15 identify the alleged statements of Mr. Heed.  
16 And that was pointed out to him in cross.  
17 Mr. Heed said:

18 "I applied those quotation marks in  
19 error."

20 But it was just the effect of what he said, and  
21 he can't be sure they were verbatim.

22 He went on to say, I won't soon forget the  
23 conversation. "I have not forgotten it." And  
24 then of course the will-say was put to him, and  
25 he was asked where the reference was in that

1           will-say to four senior RCMP officers by name  
2           being complicit and participated in a game as  
3           puppets for Coleman. And he of course had to  
4           respond that "it doesn't appear there." He  
5           said:

6                     "It was nine years earlier, and I forgot  
7                     to include it."

8           He says:

9                     "I've never forgotten those comments. I  
10                    just didn't remember to include them in my  
11                    drafting."

12           And he later referred to it as a drafting error.

13           Of course it's an error that occurred three  
14           times given the iterations of the will-say.

15           Pressed again later, given that the will-say was  
16           his attempt to capture the conversations as  
17           accurately as he could and given that he claims  
18           to have been absolutely gobsmacked by something  
19           that had been undoubtedly etched in his memory,  
20           his response was "I'm an imperfect man."

21           Pressed -- and it was suggested to him that he  
22           did not -- Mr. Heed did not say those words to  
23           him in 2009 -- he responded with "yes, I believe  
24           he did." He was asked to explain the basis of  
25           that belief, and he remarkably came up with a

1 new allegation that over the period of 2009 to  
2 2013, the time Mr. Heed was in government, he  
3 "probably --"

4 **(CONNECTION INTERRUPTED)**

5 THE COMMISSIONER: Mr. Senkpiel, I'm sorry to  
6 interrupt, but you were frozen off of my screen  
7 for a period, and your video was cut off. So I  
8 think we have to make sure that doesn't happen  
9 again, number one, and number two, you're going  
10 to have to repeat those submissions you made  
11 just over the course of the last minute or so.

12 MR. SENKPIEL: I apologize for that. Any chance you  
13 can assist me with the last note you have?

14 THE COMMISSIONER: Yes. You were talking about  
15 Mr. Pinnock's evidence that between 2009 and  
16 2013, that he -- I take it you were going to  
17 talk about the occasions Mr. Pinnock said he and  
18 Mr. Heed got together during that time frame.

19 MR. SENKPIEL: Quite so. Thank you,  
20 Mr. Commissioner.

21 Mr. Pinnock's new evidence under cross was  
22 that in the 2009 to 2013 period he:

23 "Probably interacted with Kash on eight or  
24 ten occasions, most of them in a social  
25 environment, and it was almost like a

1 broken record, the reference to Rich  
2 Coleman's wilful blindness and the  
3 manipulation of senior police officers in  
4 BC. So that's my best answer."

5 He said. The problem with this being his best  
6 answer is that it's a clear fabrication made up  
7 on the spot. Mr. Pinnock had made no reference  
8 to any of those alleged additional conversations  
9 between 2009 and 2013 in his testimony on  
10 November 5 and 6.

11 And later, following a series of objections  
12 from his counsel, Mr. Pinnock was taken to his  
13 November 5 testimony, where he was expressly  
14 asked by commission counsel whether subsequent  
15 to 2009 -- or subsequent to the 2009 lunch and  
16 during the period that Mr. Heed was still in  
17 government he had had any further conversations  
18 with Mr. Heed about organized crime or cash in  
19 casinos.

20 On November 5 Mr. Pinnock's response was no,  
21 I don't believe so. No mention was made of  
22 these conversations in his will-say either.

23 When that passage was put to him under  
24 cross, Mr. Pinnock responded:

25 "I am disappointed in myself for saying

1           that. I guess I didn't understand the  
2           question or my stress level was so high I  
3           was not grasping the spirit of the  
4           question. Of course I had numerous  
5           conversations with Kash between 2009 and  
6           2013 before he left government about this  
7           very matter."

8           When pressed again in cross-examination about  
9           those alleged additional conversations,  
10          Mr. Pinnock said:

11                 "What I will say is that in most of the  
12                 conversations that Kash and I had  
13                 concerning this description of  
14                 Mr. Coleman's wilful blindness and the  
15                 involvement of the senior Mounties or the  
16                 senior Mounties being manipulated, he  
17                 would describe it as either puppets for  
18                 Coleman or wrapped around Coleman's  
19                 fingers. Those are the two descriptors  
20                 that he would use."

21          Like the alleged additional conversations while  
22          Mr. Heed was in office, the phrase "wrapped  
23          around Coleman's fingers" was also brand new and  
24          also seemingly made up on the spot. The cross  
25          then turned to things Mr. Heed had written in

1 his will-say, as Mr. Heed -- sorry, Mr. Pinnock  
2 had written in his will-say about Mr. Heed  
3 allegedly saying -- for example, he says that  
4 Mr. Heed attributed 2 billion in revenue to  
5 gaming in 2009 -- in the 2009 conversation, and  
6 that number of course is wildly inaccurate, and  
7 it was suggested that that was the reason why  
8 Mr. Pinnock did not testify about it.  
9 Mr. Pinnock's counsel objected again on the  
10 basis that Mr. Pinnock was not required to  
11 answer questions that he was not asked. That  
12 similar submission was made yesterday, which is  
13 you should be very loath to tarnish the  
14 reputation of someone in his position given that  
15 he didn't have any control over the questions he  
16 was asked and wasn't required to proffer  
17 information if not prompted.

18 I then put it to Mr. Pinnock that he had in  
19 fact been asked a number of times on November 5  
20 and 6 whether there was anything else he wished  
21 to add that might be relevant to the mandate.  
22 And on those occasions he purported to exhaust  
23 his recollection. Finally given a concern  
24 raised by Mr. Pinnock's counsel that he had been  
25 cut off by me from explaining why he was

1           gobsmacked, I asked him to finish, and he  
2           proceeded to read from a text that was far more  
3           consistent with the personal will-say language,  
4           including the \$2 billion reference, than with  
5           his November 5 and 6 testimony. At this point  
6           Mr. McGowan interjected about whether  
7           Mr. Pinnock was reading from something, and  
8           Mr. Pinnock said:

9                   "I've written a page and a half of notes  
10                   to prepare for my evidence today ... the  
11                   points that I wanted to ensure weren't  
12                   dropped or forgotten that I thought might  
13                   be of assistance to you."

14           It was then suggested that Mr. Pinnock's memory  
15           about 2009 was mistaken and that he had allowed  
16           other things to affect his memory of the 2009  
17           lunch, including his interviews and the 2018  
18           recordings. He wouldn't agree. He was taken  
19           through various statements he had made, where he  
20           had used the language of "it's all about revenue  
21           generation." He said that was a common theme.  
22           The only time Mr. Heed, despite the reference to  
23           being a broken record, uses "it's about the  
24           money" is in the December 2018 transcript.  
25           That's the third transcript. And that's the

1 transcript Mr. Pinnock didn't originally produce  
2 to the commission. I had to ask for it, and a  
3 transcript was produced. Mr. Pinnock had said  
4 that that transcript had no evidentiary  
5 relevance.

6 Mr. Pinnock was shown various references he  
7 made to "it's all a game," including his  
8 will-say, which had a heading entitled "The  
9 Game." Mr. Heed doesn't make any reference to a  
10 game in the transcripts. I think I may be  
11 confusing Pinnock and Heed there. Mr. Pinnock  
12 was the one who used "the game" over and over  
13 and over again, and Mr. Heed makes no such  
14 reference.

15 Having gone through this, it was suggested  
16 again to Mr. Pinnock that Mr. Heed never  
17 referred to four senior RCMP officers being  
18 involved in a game. Mr. Pinnock's response was:

19 "He may not have used that phrase."  
20 Mr. Pinnock was pressed again about whether  
21 Mr. Heed said "puppets for Coleman" in 2009, and  
22 he answered:

23 "Puppets or wrapped around his finger, I  
24 can't remember which term he used on this  
25 occasion."

1           He said it could have been one, could have been  
2           the other, but he wasn't sure. Given the many  
3           changes to his evidence, Mr. Pinnock was pressed  
4           to say what Mr. Heed had actually said to him in  
5           2009. I asked him to take a fresh crack at it.  
6           And Mr. Pinnock started to describe a  
7           conversation that sounded quite similar to that  
8           articulated in the personal will-say, and that  
9           was in the notes that he had prepared for his  
10          cross-examination and referred to earlier.

11           The cross-examination then turned to an  
12          examination of Mr. Pinnock's claim that Mr. Heed  
13          had:

14                   "... confirmed everything he said in 2009  
15                   in 2018 in the recorded conversations."

16          And that Mr. Heed had expanded on it. Asked  
17          what he meant by "confirmed," Mr. Pinnock before  
18          backtracking first said that:

19                   "It was consistent with my understanding  
20                   of his messaging from 2009 and numerous  
21                   other interactions that I had had with him  
22                   after that until 2013."

23          When I pressed him on that phrasing, he said --  
24          he modified it and said:

25                   "Well, it was consistent with his

1                   messaging to me."

2                   For the reasons that I'm going to take you  
3                   through, that's not at all correct.

4                   Mr. Smart had asked Mr. Pinnock why he  
5                   simply -- the experienced investigator that he  
6                   is or was, why he just didn't ask Mr. Heed  
7                   outright what his recollection of 2009 was.  
8                   Mr. Pinnock said it was an option, but he just  
9                   didn't do it. And in fact it's an option that  
10                  he had used in two other cases where he had  
11                  asked people if they recalled things that he  
12                  thought they had recalled, and at least in one  
13                  of them he had made a note that they didn't have  
14                  the same recollection. And that shows up in his  
15                  will-say. And he says he just didn't take  
16                  advantage of that option even though he had used  
17                  it in other circumstances and obviously had the  
18                  ability to do it.

19                  Despite this, he said he recorded the first  
20                  conversation with Mr. Heed because he said he  
21                  wanted to:

22                         "Solidify it and lock it down in the event  
23                         something like this commission, wherever  
24                         it struck."

25                  There is absolutely no reason in my

1            submission -- given that they were friends,  
2            given that Mr. Pinnock says that Mr. Heed was a  
3            broken record about these issues and given that  
4            Mr. Heed had no understanding that Mr. Pinnock  
5            was surreptitiously recording phone calls that  
6            were prompted by Mr. Heed's concern for  
7            Mr. Pinnock, there is no reason why he wouldn't  
8            have just asked him outright, except for the  
9            fact that he knew that the answer would not have  
10           been what he wanted it to be. And what he did  
11           get is nothing like a confirmation of everything  
12           or an expansion upon what he alleges took place  
13           in 2009. Mr. Pinnock said:

14                    "It was like a broken record, sir. I knew  
15                    when I hit the record button during our  
16                    first recorded conversation in 2018 I knew  
17                    what he was going to say. He had said it  
18                    so often to me."

19            This evidence ties into his evidence that the  
20            2018 conversations confirmed the 2009  
21            conversation. Mr. Pinnock said that this  
22            confirmation was particularly the case with  
23            July 10, 2018's transcript. Not the December  
24            2018 transcript, which he hadn't produced.  
25            Mr. Jaffe read bits of that transcript again

1           yesterday without any regard for the fact that  
2           it was a 2018 statement and a very specific  
3           statement and tried to conflate it with 2009,  
4           but they're very different. And that was a  
5           specific statement, so I'm going to take you  
6           through that.

7                     On November 5 Mr. Pinnock said that  
8           Mr. Heed told him that senior members of the  
9           RCMP were complicit with Mr. Coleman in the  
10          money laundering problem in casinos and that he  
11          told him the names of the four senior members of  
12          the RCMP and that they were playing a game and  
13          that they were puppets for Coleman. He said  
14          Mr. Heed told him this in 2009.

15                    In July 2018 Mr. Heed does make a  
16          reference. There's a single reference to  
17          "puppets to Coleman," but it was a very specific  
18          reference that temporally could not have been  
19          made in 2009. Mr. Pinnock, despite having the  
20          surreptitious recording, misremembered the July  
21          statement, misrecorded it and put it in his  
22          will-say in an inaccurate form. He said that --  
23          or his notes suggested that the reference to  
24          "puppets to Coleman" was a general reference to  
25          those four individuals being puppets, but the

1 transcript was different. What Mr. Heed  
2 actually said was:

3 "You know, [so and so] and I have been  
4 friends for years and I actually – when he  
5 hired Peter German to do this thing, I  
6 phoned him and gave him shit ... Peter  
7 German was the assistant commissioner of  
8 LND when the decision was made and he was  
9 part of that decision making. It was  
10 [three individual names] and German that  
11 were part of the decision making, were  
12 puppets for Coleman, to pull IIGET."

13 Mr. Pinnock accepted that the reference in the  
14 transcript was to the officers being puppets for  
15 Coleman in relation to pulling IIGET.

16 What Mr. Heed tells Mr. Pinnock in 2018 is  
17 about a conversation he had in 2017 with the  
18 minister of government about a decision that was  
19 made before Mr. Heed entered government and that  
20 Mr. Heed had no first-hand knowledge about.  
21 Mr. Pinnock agreed with that. Mr. Heed was not  
22 confirming a statement made by him in 2009.  
23 Mr. Heed -- and this was brought out by, I  
24 believe, the AG, but Mr. Heed was never a member  
25 of IIGET. IIGET was disbanded before he entered

1 politics. And he had no involvement in the  
2 decision to disband it. Mr. Heed did not even  
3 learn about who disbanded it until recently, as  
4 a result of these proceedings. Mr. Holland  
5 confirmed that none of the discussions about  
6 disbanding IIGET -- or expanding IIGET involved  
7 Mr. Heed and Mr. Heed had no role or  
8 participation in any of them.

9 I then put it to Mr. Pinnock:

10 "Will you agree with me that that is very  
11 different --"

12 What the transcript actually says is very  
13 different than what he testified to on  
14 November 5. His response was:

15 "It does seem to be discrepant, yes."

16 When pressed that he did not remember what  
17 Mr. Heed said in 2009, Mr. Pinnock said:

18 "I remember the essence of what Kash told  
19 me in November of 2009."

20 This of course sounds a lot like his first  
21 answer about the meaning of "confirmed" being  
22 "my understanding of his messaging."

23 Mr. Commissioner, I note the time. I'm  
24 just going to be a couple more minutes, if I may  
25 have leave to finish up.

1 THE COMMISSIONER: Yes, that's fine, Mr. Senkpiel.

2 I'm sorry, did you hear me?

3 MR. SENKPIEL: I did, yes. Sorry. It's not a  
4 technological issue; it's a slow brain issue.

5 THE COMMISSIONER: Thank you.

6 MR. SENKPIEL: I put it to Mr. Pinnock that Mr. Heed  
7 neither confirmed the 2009 comment in 2018 or  
8 even repeated the essence of them in 2018, and  
9 all Mr. Pinnock could say was:

10 "I'd have to go back through those  
11 transcripts to be certain, certain in my  
12 response to you."

13 And after -- or adding to the list of his  
14 drafting errors and things that he was  
15 disappointed about and the fact he's an  
16 imperfect man, he ultimately acknowledged that  
17 memories do fade, including his own.

18 The December transcripts, one of those  
19 things that can only happen in proceedings as  
20 they unfold, but it's -- an issue arose because  
21 we asked for it, it not having been previously  
22 produced, and Mr. Pinnock noting that nothing  
23 particularly noteworthy was discussed in it.

24 When I asked Mr. Pinnock under  
25 cross-examination whether there was any place in



1 I think this will vindicate people --

2 MR. PINNOCK: M'mm-hmm.

3 MR. HEED: -- and show -- first of all,

4 again -- I don't know how much you've

5 [indiscernible]. There's a few

6 reasons that this happened, but

7 being -- the big reason is it's the

8 money.

9 MR. PINNOCK: Oh, yeah.

10 MR. HEED: It's all about money.

11 MR. PINNOCK: Oh, yeah.

12 MR. HEED: It's all about money.

13 MR. PINNOCK: We've -- you and I talked

14 about that nine years ago when I

15 went --

16 MR. HEED: Yeah.

17 MR. PINNOCK: -- public.

18 MR. HEED: Yeah.

19 MR. PINNOCK: Yeah.

20 MR. HEED: Yeah."

21 This is the only time Mr. Heed uses the phrase

22 "it's all about the money" in any of the three

23 transcripts. And the language obviously appears

24 to be him suggesting the explanation as if he's

25 doing it for the first time. It's not the

1           phrasing or the explanation of someone who had  
2           been repeating this like a broken record.

3           The more fundamental problem with this  
4           passage is that not only is it very difficult to  
5           hear because of the way the conversation  
6           unfolds, but Mr. Pinnock and Mr. Heed both gave  
7           the same evidence, which is that Mr. Heed has a  
8           tendency -- call it a tick, call it a tendency,  
9           call it an affect -- to move conversations along  
10          by interrupting with yeah or multiple yeahs,  
11          ending statements by the other person with yeah,  
12          even in circumstances where he can have  
13          absolutely no idea that what's being said is  
14          correct. And I took you through in a  
15          painstaking way a couple examples of this during  
16          Mr. Pinnock's cross-examination.

17          Mr. Heed testified that when he says yeah  
18          in this way, it's not him confirming what is  
19          being said; it usually means he isn't paying  
20          much attention, and it's a way to move a  
21          conversation along. And I say that's credible.  
22          But I say in any event, there's nothing about  
23          the passage in December 2009 that confirms that  
24          Mr. Heed said anything. What Mr. Pinnock  
25          suggests is that we've, you and I, talked about

1           that. He doesn't say you remember when you told  
2           me it was all about the money in 2009. He  
3           doesn't say Mr. Heed said it. He simply says  
4           they discussed it.

5           The 2009 lunch followed on from the  
6           interview Mr. Pinnock gave when he made comments  
7           about revenue, as noted above. The phrase "it's  
8           all about the money" is one of the many phrases  
9           that Mr. Pinnock alleges Mr. Heed said in 2009.  
10          And in my submission the December 2018  
11          transcript cannot be said to be confirmation of  
12          the 2009 lunch or an expansion of it. There's  
13          nothing in any of the three transcripts that  
14          reinforces the allegations about 2009.

15          And the failure by Mr. Pinnock and in the  
16          submissions yesterday by his counsel to properly  
17          distinguish between 2009 and the evidence  
18          relating to it and what's actually in those  
19          transcripts, which is troubling given that it's  
20          written down, is a problem, and it has led to a  
21          lot of unwarranted media attention on an issue  
22          that quite frankly isn't particularly pertinent  
23          to this commission's mandate, because it's  
24          describing a conversation that didn't happen and  
25          couldn't have happened.

1           Mr. Pinnock was given two opportunities at  
2           the start and at the end of his cross-examination  
3           to acknowledge that he was either mistaken or  
4           wasn't telling the truth. He took up neither  
5           opportunity. Instead towards the end of his  
6           cross-examination he said:

7           "I'm not misrepresenting one syllable of  
8           my evidence. I want to make that clear.  
9           I don't have a hate-on for anybody or  
10          anything. I do think the public needs  
11          this information out there. I'm happy to  
12          cooperate. I am committed to doing the  
13          very best I can to provide the information  
14          at my disposal. I am not perfect. My  
15          evidence delivery today has been less than  
16          perfect, I concede that, but, sir, I've  
17          done the best to tell the truth to you  
18          today about what happened in November of  
19          2009. The meeting happened. I've done my  
20          best to characterize the conversation  
21          accurately, and assist the Commissioner in  
22          that information. There's not been one  
23          untruthful thing that I've said today and  
24          never would."

25                 And in my respectful submission Mr. Pinnock's

1 evidence is quite to the contrary. It's not  
2 reliable, it's not consistent and it's not  
3 credible.

4 So to conclude, I submit that given the  
5 time period that Mr. Heed was in government, the  
6 limited role he had in government and the short  
7 duration of his role as SG, his lack of  
8 knowledge of issues relating to money laundering  
9 in casinos while in government and his lack of  
10 any knowledge that either money laundering or  
11 proceeds of crime were issues, let alone  
12 priority issues, it cannot be said that he  
13 failed to take steps in response to such  
14 problems.

15 Similarly, Mr. Heed did not make unfounded  
16 allegations about government officials and law  
17 enforcement officers, including that they failed  
18 to intervene in serious criminal activity they  
19 knew to be occurring within gaming facilities in  
20 BC, to Mr. Pinnock in 2009. To the extent  
21 Mr. Heed expressed personal opinions that were  
22 not based on any first-hand knowledge and  
23 private conversations he did not know were being  
24 surreptitiously recorded in 2018, long after he  
25 had left public life, those opinions are

1           irrelevant to the commission's mandate, and  
2           that's why he wasn't asked about them by  
3           Mr. Martland, and that's why he wasn't going to  
4           talk about them. It makes for entertaining  
5           media reporting, but it does not assist this  
6           commission in its task.

7           And so to the extent the media may wish to  
8           report on this issue any further, they should  
9           have a careful look at Mr. Pinnock's direct and  
10          cross evidence, and they should have a look at  
11          Mr. Heed's closing submission, and they should  
12          be careful to understand the distinction between  
13          Mr. Heed in his 2009 SG hat and Mr. Heed in his  
14          public media persona hat in 2018.

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

17          THE COMMISSIONER: Thank you, Mr. Senkpiel.

18                 I'll now turn to Ms. Magonet for the  
19                 British Columbia Civil Liberties Association,  
20                 who has been allocated 30 minutes.

21          MS. MAGONET: Thank you, Mr. Commissioner. Can you  
22                 hear me?

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

24                 **CLOSING SUBMISSIONS FOR THE BRITISH COLUMBIA CIVIL**  
25                 **LIBERTIES ASSOCIATION BY MS. MAGONET:**

1                   Excellent. So I'm counsel for the British  
2                   Columbia Civil Liberties Association, or BCCLA,  
3                   which operates on the unceded territories of the  
4                   Squamish, the Musqueam and the Tsleil-Waututh  
5                   Nations.

6                   The BCCLA is one of Canada's oldest human  
7                   rights organizations, and it has endeavoured to  
8                   advocate for the rights and freedoms of ordinary  
9                   people in these proceedings.

10                  In its opening submissions, the BCCLA raised  
11                  concerns that many recommendations that had been  
12                  made to this commission would undermine human  
13                  rights and freedoms. Mr. Commissioner, the  
14                  evidence we've heard over the last two years has  
15                  done nothing to alleviate these concerns.  
16                  Indeed it has only heightened them.

17                  The BCCLA recognizes that if money  
18                  laundering is left unchecked, it can cause  
19                  serious social and political consequences. That  
20                  said, many AML proposals that were made to this  
21                  commission raise very serious constitutional and  
22                  human rights concerns. These proposals include  
23                  unexplained wealth orders, expanded policing and  
24                  civil forfeiture powers, increased information  
25                  sharing and mass surveillance. These proposals

1                   jeopardize privacy rights, equality rights and  
2                   procedural protections afforded by our charter.

3                   Furthermore there was a paucity of evidence  
4                   that these proposals would be effective for  
5                   fighting money laundering. The evidence was,  
6                   however, clear that they would be costly to  
7                   implement. This is not a call to throw up your  
8                   hands, Mr. Commissioner, but rather a call to  
9                   weigh the true costs of such invasive measures  
10                  with unknown benefits.

11                  Today I won't go through the BCCLA's  
12                  written submissions in their entirety. Rather I  
13                  want to focus on four key issues from the civil  
14                  liberties perspective. And those issues are  
15                  asset forfeiture, information sharing and  
16                  privacy, inflating foreign money with dirty  
17                  money and policing and drug prohibition.

18                  So I will turn first to asset forfeiture.  
19                  The BCCLA is a long-standing critic of BC's  
20                  civil forfeiture regime, and it is very much  
21                  opposed to any expansion of this regime,  
22                  including the introduction of unexplained wealth  
23                  orders. The BCCLA's concerns with the existing  
24                  civil forfeiture regime are numerous. Civil  
25                  forfeiture grants truly extraordinary power to

1           the state, and it undermines due process  
2           protections under our constitution. In the  
3           words of Professor Michelle Gallant from the  
4           University of Manitoba law school:

5                   "... civil forfeiture represents a vast  
6                   extension of state power, replicating the  
7                   ambit of the criminal law and placing  
8                   powerful new civil tools at the state's  
9                   disposal. This enormous power of the  
10                  state may be pitted against the powerless,  
11                  the ill, the addicted, the socially  
12                  excluded or the marginalized."

13           And indeed research in the United States shows  
14           that civil forfeiture laws are used to  
15           disproportionately target low income and  
16           racialized communities. That's why the BCCLA is  
17           calling for similar research to be done in this  
18           province, because it fears the same may be true  
19           here. It's calling for the collection of  
20           race-based and disaggregated data about the  
21           people who are most frequently targeted by BC's  
22           *Civil Forfeiture Act*.

23           Civil forfeiture also undermines charter  
24           rights because property can be taken in the  
25           absence of a criminal conviction. These

1                   proceedings are civil, so the defendant doesn't  
2                   benefit from the procedural protections that  
3                   would apply in criminal matters. This creates a  
4                   real risk that the property of innocent people  
5                   will be subject to forfeiture. So perhaps more  
6                   significantly it creates a risk that civil  
7                   forfeiture will become, in the words of  
8                   Dr. Peter German, "a dumping ground for bad  
9                   criminal cases."

10                   These concerns I've just mentioned are  
11                   exacerbated by BC's administrative forfeiture  
12                   regime because that regime allows property to be  
13                   forfeited in the absence of judicial oversight.  
14                   And indeed many, many cases in BC are channelled  
15                   through this regime.

16                   The BCCLA is also concerned by the access  
17                   to justice issues created by civil forfeiture in  
18                   this province. Most civil forfeiture cases  
19                   never make it to court, in part because the cost  
20                   of defending a claim can far exceed the cost  
21                   of -- or rather the value of the assets that are  
22                   subject to forfeiture. The BCCLA would like to  
23                   see legal aid made available for civil  
24                   forfeiture cases, and it believes that  
25                   defendants should be allowed to use restrained

1           assets to pay for their legal expenses, and  
2           these protections, as we heard in the  
3           proceedings of this commission, are available in  
4           other jurisdictions.

5           The BCCLA also has concerns about the  
6           distribution of revenue generated through civil  
7           forfeiture. In particular it takes the position  
8           that the civil forfeiture office should no  
9           longer be self-funded. A self-funding model can  
10          create perverse incentives for public  
11          authorities to use civil forfeiture to benefit  
12          their bottom lines instead of to combat serious  
13          crime.

14          The organization would also like the civil  
15          forfeiture office to be required to produce an  
16          annual report detailing the revenue it's raised  
17          and how that's been distributed, and such  
18          requirements do exist in other jurisdictions as  
19          well.

20          Lastly, there is a complete lack of  
21          credible evidence that civil forfeiture is an  
22          effective tool for fighting money laundering.

23          So in light of these many concerns, the  
24          organization is absolutely opposed to giving the  
25          civil forfeiture office additional powers. It's

1           opposed to a closer relationship existing  
2           between the civil forfeiture office and law  
3           enforcement in terms of sharing information and  
4           personnel. And furthermore, as I'll turn to  
5           now, it is opposed to the introduction of  
6           unexplained wealth orders.

7           So unexplained wealth orders or UWOs exist  
8           in a small number of jurisdictions, and while  
9           there are differences, they generally require a  
10          person to explain the source of their wealth,  
11          and they allow for that wealth to be confiscated  
12          if the person cannot provide an adequate  
13          explanation that it was legally acquired. UWOs  
14          are truly an extraordinary remedy because they  
15          reverse the burden of proof, they reverse the  
16          principle that you are innocent until you are  
17          proven guilty. It is for this reason that UWO  
18          raise very profound civil liberties concerns.  
19          It's the BCCLA's position that they are very  
20          much at odds with the values expressed in our  
21          charter. They erode privacy rights, the  
22          presumption of innocence and protections against  
23          self-incrimination.

24          Having said that, the BCCLA takes the  
25          position that this commission cannot make any

1 constitutional determinations regarding UWO  
2 legislations, as such determinations simply lie  
3 outside this commission's mandate. Such  
4 constitutional questions are not properly before  
5 it. This commission is mandated with making  
6 findings and recommendations about money  
7 laundering in BC. It is not mandated with  
8 deciding the constitutionality of UWO  
9 legislation, but hasn't even been introduced.

10 The BCCLA further submits that it would even  
11 be inappropriate for this commission to make  
12 anticipatory comments about the  
13 constitutionality of potentially UWO provisions  
14 because there's simply an inadequate factual  
15 foundation to ground such commentary. No such  
16 legislation has been proposed. These comments  
17 would be made in a factual vacuum.

18 This commission may, however, make factual  
19 findings about UWOs. That falls clearly within  
20 its mandate. And the BCCLA submits that this  
21 commission should find as a matter of fact that  
22 this type of tool is extremely controversial  
23 from a civil liberties perspective.

24 The evidence before this commission was  
25 clear. There is no international consensus on

1           the desirability of UWOs from the perspective of  
2           balancing rights with law enforcement  
3           objectives. Indeed the evidence shows that --  
4           showed that concerns about the compatibility of  
5           UWOs with human rights have been raised across  
6           the globe. The Irish Supreme Court has  
7           characterized this tool as "unquestionably  
8           draconian." Dr. Skead, who provided evidence in  
9           chief from the University of Western Australia  
10          law school, he has written that UWO legislation:

11                   "... may be said to fly in the face of  
12                   Australia's fundamentally adversarial  
13                   system of law and undermine the notion  
14                   that a defendant is 'innocent until proven  
15                   guilty'."

16                   To make matters worse, there is a complete  
17                   lack of evidence that UWOs are effective. This  
18                   was made clear through the testimony of many  
19                   witnesses. But the evidence is clear that this  
20                   tool will be costly to implement and very  
21                   difficult to roll back if it is adopted. This  
22                   is why the BCCLA is urging this commission not  
23                   to recommend the adoption of UWOs in this  
24                   province.

25                   I will turn now to the second civil

1                   liberties issue I wish to address today:  
2                   information sharing and privacy. The BCCLA is  
3                   very, very concerned about the privacy  
4                   implications of many proposals made to this  
5                   commission. This commission was presented with  
6                   numerous proposals for mass surveillance and  
7                   novel information sharing and collection  
8                   initiatives that undermine charter rights and  
9                   that are incompatible with both the text and the  
10                  spirit of Canadian privacy legislation. These  
11                  proposals jeopardize the really careful balance  
12                  struck in our constitution and in privacy laws  
13                  between privacy protection and law enforcement  
14                  objectives.

15                   And it's worth noting that these proposals  
16                   will not only impact individuals engaged in  
17                   criminal activity, they will also lead to  
18                   large-scale surveillance of law-abiding  
19                   Canadians. Furthermore -- and this will be a  
20                   theme in my submissions -- there was a complete  
21                   lack of credible evidence that these proposals  
22                   would be effective.

23                   As Dr. Sharman from the University of  
24                   Cambridge noted in his report:

25                   "Canada suffers from what in many ways is

1                   the central paradox of AML policy: the  
2                   law has provided an escalating succession  
3                   of powerful tools for surveillance,  
4                   prosecution and asset confiscation, and  
5                   yet the actual effectiveness of these laws  
6                   seems to remain very low. It is striking  
7                   that more than 30 years after the  
8                   introduction of international AML  
9                   standards, there is little or no evidence  
10                  that there is any less money laundering or  
11                  predicate crime as a result."

12                 The BCCLA entirely agrees with this assessment.  
13                 It further submits that this province doesn't  
14                 need to make a choice between fighting money  
15                 laundering and protecting privacy. This is a  
16                 false choice. As the evidence of Sir Robert  
17                 Wainwright showed -- from Europol -- robust  
18                 privacy protections can actually help in the  
19                 fight against money laundering. And this is  
20                 because they limit the type of information the  
21                 state, including law enforcement, is able to  
22                 collect, and they really force investigations to  
23                 focus on the most relevant information; they  
24                 streamline the investigatory process.

25                 So I'm going to speak specifically to a few

1                   privacy issues that we're most concerned about,  
2                   and I'll start off by talking about FINTRAC.  
3                   The BCCLA is very much opposed to any increased  
4                   data collection by FINTRAC, including amendments  
5                   to the *Proceeds of Crime (Money Laundering) and*  
6                   *Terrorist Financing Act* that would add further  
7                   reporting entities to FINTRAC. It is also  
8                   opposed to granting FINTRAC with realtime access  
9                   to all financial transactions in Canada, which  
10                  was recommended by more than one witness to this  
11                  commission. The reality is that FINTRAC already  
12                  collects massive amounts of data. Canada  
13                  currently has one of the most extensive AML data  
14                  collection regimes in the world. It receives  
15                  almost 10 million more reports per year than  
16                  FinCEN, which is considered by the ACLU to be a  
17                  mass surveillance scheme.

18                         In the 2019/2020 year, FINTRAC received  
19                         over 31 million reports. Given this volume of  
20                         reporting, it's quite obvious that most reports  
21                         that FINTRAC is receiving have no relation to  
22                         criminal activity. Indeed the Office of the  
23                         Privacy Commissioner of Canada found in its most  
24                         recent audit of FINTRAC that there are very  
25                         strong indications that the vast majority of

1 reports received by FINTRAC are never used.  
2 Only a small fraction of them are sent to law  
3 enforcement. Though only a small fraction  
4 result in actionable intelligence. The PCMLTFA  
5 regime is therefore hugely disproportionate, and  
6 in these circumstances it would be quite simply  
7 absurd to allow FINTRAC to collect more  
8 information.

9 Furthermore there's no evidence that this  
10 regime is effectively deterring money  
11 laundering. Rather the evidence suggests that  
12 it is costly, ineffective and leading to a very  
13 high data collection footprint for Canadians.

14 The BCCLA is also opposed to increased  
15 information sharing between law enforcement and  
16 FINTRAC, including allowing for two-way  
17 information sharing or allowing law enforcement  
18 to have direct access to FINTRAC databases,  
19 which is what some witnesses recommended. These  
20 proposals would undermine FINTRAC's  
21 independence, and that independence is protected  
22 not only by FINTRAC's enabling legislation, but  
23 it is also in our submission a constitutional  
24 imperative. It is protected by section 8 of the  
25 charter.

1                   I'll turn now to some submissions on mass  
2                   data collection. This commission was presented  
3                   with numerous proposals for the creation of AML  
4                   clearing houses that would aggregate data from  
5                   many different sources and allow many different  
6                   bodies, including private entities, sometimes  
7                   state entities, sometimes even law enforcement,  
8                   to access this data. The details of these  
9                   proposals differ, but examples include the real  
10                  estate intelligence hub proposed by Deloitte and  
11                  Contexta, an expanded mandate for data branch of  
12                  the Finance Real Estate and Data Analytics Unit,  
13                  the fusion centre proposed by the Enforcement  
14                  Panel, the AML data framework proposed by Work  
15                  Stream 1 of the BC-Canada Working Group on Real  
16                  Estate and the BC Fusion Centre. So this was a  
17                  recurrent theme during these proceedings that  
18                  this type of clearing house was needed.

19                  The BCCLA is very concerned that these  
20                  proposals could lead to the mass surveillance of  
21                  financial and property transactions. And of  
22                  course the details of these proposals differ.  
23                  They haven't been implemented yet, so it's hard  
24                  to say what they would look like on the ground,  
25                  but many of these present this as a very real

1 risk.

2 Further, some of these proposals would  
3 co-opt private parties into providing the state,  
4 including in some cases police, with access to  
5 private information. These proposals raise very  
6 serious concerns with respect to both section 8  
7 of the charter and privacy legislation. The  
8 principle behind these proposals is to leverage  
9 big data to fight money laundering. And big  
10 data raises really unique and particular privacy  
11 risks. Big data can create a comprehensive and  
12 penetrating gaze into the lives of individuals,  
13 and it can lead to the amalgamation and creation  
14 of information that individuals may not even  
15 know exists about themselves.

16 Further, this commission was presented with  
17 several proposals to harness algorithmic and  
18 data analytic technologies to process the data  
19 collected by these AML hubs. The BCCLA has  
20 concerns about the use of algorithmic technology  
21 to fight money laundering, and is particularly  
22 concerned about the ways in which such  
23 technologies can undermine privacy and equality.  
24 It's well documented that algorithmic  
25 technologies can in some cases perpetuate

1           discriminatory feedback loops and confirmation  
2           bias.

3                   The last privacy issue I'm going to speak  
4           to is beneficial ownership. As you're well  
5           aware, Mr. Commissioner, advocating for  
6           beneficial ownership has become a very common  
7           position that people take when discussing how to  
8           fight money laundering. However, there is a  
9           lack of evidence that beneficial ownership  
10          registries are effective. Indeed this was made  
11          clear through Mr. -- excuse me -- through  
12          Dr. Sharman's evidence. Further, such regimes  
13          have a real potential to undermine privacy  
14          rights.

15                   The BCCLA submits that beneficial ownership  
16          registries should be operated under a principle  
17          of data minimization. This means that only the  
18          personal information that is necessary to  
19          achieve specified goals should be collected, and  
20          the use and disclosure of that information must  
21          be appropriately restricted. The BCCLA is  
22          opposed to providing public access to the  
23          information contained in these registries, and  
24          it further submits that individuals need to be  
25          allowed to apply for exemptions to have their

1 information omitted from these registries for  
2 privacy and security reasons.

3 I'll now turn to our next theme, which is  
4 conflating foreign money with dirty money.  
5 Anti-Asian sentiment is truly prevalent in  
6 public discourse about money laundering in this  
7 province. There is a tendency to conflate  
8 foreign money with dirty money in the real  
9 estate industry and beyond. And this discourse  
10 has a real impact on Asian communities. It has  
11 led to the scapegoating of foreign buyers based  
12 simply on their names, and it has influenced how  
13 casinos are policed. This discourse was even on  
14 display during this commission, with many  
15 witnesses focusing on Chinese money laundering  
16 or Chinese organized crime in their testimony.

17 Professor Henry Yu from the University of  
18 British Columbia provided very compelling  
19 evidence about the impact of this discourse. As  
20 he explained, one of the consequences of  
21 frequent news stories about Chinese money  
22 laundering is that we begin to see a set of  
23 people as a problem, and this is a slippery  
24 slope to be on.

25 The BCCLA recommends that this commission

1           should adopt an ethno-agnostic approach when  
2           making findings and recommendations about money  
3           laundering in this province. And what that  
4           means is that except where it is relevant, the  
5           country of origin of laundered funds should not  
6           be identified. It's better to focus on the  
7           specific individuals, actors or criminal  
8           organizations that are implicated in money  
9           laundering.

10                   Now, we recognize that in some cases the  
11           country of origin will be relevant or a specific  
12           government involved could be relevant, and in  
13           those cases it's better to focus on the name of  
14           the government rather than the country at large  
15           to avoid creating a perception that all the  
16           individuals who live in that country or who have  
17           emigrated from that country are at fault.

18                   The last issue I'll address today,  
19           Mr. Commissioner, is policing and drug  
20           prohibition. The BCCLA is opposed to the many  
21           recommendations made to this commission for  
22           increasing police powers and presence as a way  
23           to fight money laundering. The indiscriminate  
24           expansion of police powers always presents a  
25           potential for abuse. Further, the evidence

1                   before this commission showed that specialized  
2                   policing units have failed to make an impact.  
3                   We submit that the government must consider  
4                   less-invasive regulatory measures before  
5                   creating yet another police unit to fight money  
6                   laundering. In the BCCLA's view, the government  
7                   needs to focus on actually tackling the root  
8                   causes of money laundering instead of spending  
9                   more and more tax dollars on policing. And in  
10                  particular, governments need to address our  
11                  failed model of drug prohibition. The BCCLA  
12                  urges this commission to follow the guidance of  
13                  Dr. Evan Wood, an international authority on  
14                  illicit drug policy. Dr. Wood submitted a  
15                  report to this commission on behalf of the  
16                  BC Centre on Substance Abuse. And as he wrote  
17                  in this report:

18                                "Addressing the profits of prohibition by  
19                                regulating the drug market is the only  
20                                viable way to address the fundamental  
21                                cause of organized crime and money  
22                                laundering in BC."

23                  The BCCLA submits that addressing our failed  
24                  model of drug prohibition is both a critical  
25                  step in the fight against money laundering and a

1 public health imperative. The opioid epidemic  
2 has taken countless lives in this province. Our  
3 governments need to stop investing in a war on  
4 drugs that is leading nowhere and adopt a public  
5 health approach to drug regulations if they're  
6 serious about tackling money laundering and  
7 organized crime.

8 Thank you, Mr. Commissioner. The BCCLA has  
9 very much appreciated the opportunity to  
10 participate in these proceedings, and we hope  
11 our submissions have been of assistance.

12 Unless you have any questions, those are our  
13 submissions

14 THE COMMISSIONER: No. Thank you, Ms. Magonet.

15 MR. MCGOWAN: Mr. Commissioner, I wonder if it might  
16 be an appropriate time for a 15-minute recess?

17 THE COMMISSIONER: Yes, I think so. Thank you.

18 We'll take 15 minutes.

19 THE REGISTRAR: The hearing is adjourned for a  
20 15-minute recess until 11:18 a.m.

21 **(PROCEEDINGS ADJOURNED AT 11:03 A.M.)**

22 **(PROCEEDINGS RECONVENED AT 11:18 A.M.)**

23 THE REGISTRAR: Thank you for waiting. The hearing  
24 is resumed. Mr. Commissioner.

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

1                   I'll turn now to Mr. Westell on behalf of  
2                   the Canadian Bar Association and the Criminal  
3                   Defence Advocacy Society.

4           MR. WESTELL: Thank you, Mr. Commissioner. Can I  
5                   confirm that you can hear me clearly.

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

7           MR. WESTELL: Thank you. I'll just mention at the  
8                   outset I've had a bit of trouble with my camera.  
9                   If it goes out I'll have to click it back on  
10                  quickly, but my sound should be unbroken, I'm  
11                  hoping, for the duration here.

12          THE COMMISSIONER: Thank you.

13                   **CLOSING SUBMISSIONS FOR THE CANADIAN BAR ASSOCIATION**  
14                   **BC BRANCH AND THE CRIMINAL DEFENCE ADVOCACY SOCIETY**  
15                   **BY MR. WESTELL:**

16                   It's my pleasure to deliver the joint  
17                   closing submission on behalf of both the  
18                   Canadian Bar Association's British Columbia  
19                   branch and the Criminal Defence Advocacy  
20                   Society, CDAS, for this, the commission of  
21                   inquiry into money laundering in British  
22                   Columbia. Both CBABC and CDAS operate all over  
23                   the province but are based on the traditional  
24                   territories of the Squamish, Musqueam and  
25                   Tsleil-Waututh people.

1                   While the CBABC represents the interests of  
2                   BC lawyers in all practice areas, CDAS  
3                   represents the interests of a subset of that  
4                   group, namely BC's criminal defence bar. Both  
5                   organizations acknowledge that money laundering  
6                   has been, and continues to be, a significant  
7                   problem in British Columbia. Both organizations  
8                   also acknowledge that the commission's mandate  
9                   is to conduct hearings and make finding of fact  
10                  respecting money laundering in BC and also make  
11                  recommendations considered necessary and  
12                  advisable regarding, A, the extent, growth,  
13                  evolution and methods of money laundering in the  
14                  following sectors: professional services,  
15                  including the legal profession. B, the acts or  
16                  omissions of regulatory authorities or  
17                  individuals with powers, duties or functions in  
18                  respect of those sectors to determine if those  
19                  acts or omissions have contributed to money  
20                  laundering BC; C, the scope and effectiveness of  
21                  the powers duties and functions exercised or  
22                  carried out by the regulatory authorities and D,  
23                  barriers to effective law enforcement.

24                   The commission's ultimate conclusions and  
25                   recommendations stand to significantly affect

1           how lawyers do their jobs going forward. They  
2           also stand to impact the extent to which members  
3           of the public, lawyer's clients in other words,  
4           will continue to feel confident that their  
5           dealings with lawyers will remain strictly  
6           confidential. In granting joint standing to  
7           CBABC and CDAS the commission has acknowledged  
8           already that these two organizations may assist  
9           the commission to ensure that the foundational  
10          principles of the lawyer/client relationship,  
11          including the independence of the legal  
12          profession, solicitor/client privilege and the  
13          duty of confidentiality, are fully and fairly  
14          considered in any recommendations that are  
15          ultimately made.

16                   Throughout the submissions that follow,  
17          CBABC and CDAS provide a set of recommendations  
18          in response to the totality of the evidence led  
19          at the commission. I'll begin with by CBABC  
20          submissions. CBABC represents over  
21          7,000 lawyers in British Columbia. It speaks  
22          for the interests of the legal profession. This  
23          contrasts with the role of the Law Society of  
24          British Columbia, the regulator for lawyers in  
25          the province. Unlike the CBABC, the function of

1           the LSBC is to protect the interests of the  
2           public. In its application for standing as a  
3           participant in this inquiry, the CBABC submitted  
4           that the findings of fact and recommendations of  
5           the commission will directly affect lawyers who  
6           are on the front line of the client relationship  
7           and service. This is significant as lawyers  
8           carry the responsibility of preserving the  
9           foundational principles of the lawyer/client  
10          relationship, including independence,  
11          solicitor/client privilege and confidentiality.

12                    CBABC's principal interest in this  
13           proceeding is the zealous protection of  
14           solicitor/client privilege in the public  
15           interest. The CBABC is also concerned about  
16           public misinformation suggesting there is a high  
17           risk of money laundering inherent in the work of  
18           lawyers or that lawyers are to blame in any way  
19           for the perceived money laundering crisis.

20                    In its role as a voice of the legal  
21           profession of BC, the CBABC seeks to emphasize  
22           the nature and importance of certain  
23           foundational principles, principles I've already  
24           mentioned. First, the duty of confidentiality.  
25           This refers to a lawyer's ethical and

1 professional obligation not to disclose to  
2 anyone information received from a client in the  
3 course of a professional relationship.  
4 Solicitor/client privilege is narrower in scope  
5 and refers to the sacrosanct privilege that  
6 attaches to communications between lawyer and  
7 client regarding and relating to the giving or  
8 receiving of legal advice. It is a principle of  
9 fundamental justice and protected by section 7  
10 of the charter. Independence in the context of  
11 the role that individual lawyers must play in  
12 relation to their clients refers to the  
13 proposition that the state cannot impose duties  
14 on lawyers that interfere with their duty of  
15 commitment to advancing their clients'  
16 legitimate interests. It is also a principle of  
17 fundamental justice and protected by section 7  
18 of the charter. As Justice Cromwell explained  
19 in his reasons for the majority in the case --  
20 in the *Federation* case, he wrote:

21 "We should, in my view, recognize as a  
22 principle of fundamental justice that the  
23 state cannot impose duties on lawyers that  
24 undermine their duty of commitment to  
25 their clients' causes. Subject to

1                   justification being established, it  
2                   follows that the state cannot deprive  
3                   someone of life, liberty or security of  
4                   the person otherwise than in accordance  
5                   with this principle."

6                   The CBA has a long history of actions on issues  
7                   related to money laundering and has participated  
8                   in consultation, review and discussion with the  
9                   federal government and law societies regarding  
10                  anti-money laundering legislation since 1998.  
11                  The CBA also intervened in two previous  
12                  constitutional challenges to federal AML  
13                  legislation. The CBABC has produced documents  
14                  for the commission, letters and submissions  
15                  prepared by the CBA dating back to 1998, that  
16                  demonstrate its longstanding commitment to  
17                  uphold and defend the above referenced core  
18                  principles. The CBABC's documents further show  
19                  that the CBA has consistently raised the alarm  
20                  that AML measures requiring lawyers to disclose  
21                  client records to the government will violate  
22                  these core principles. The CBA successfully  
23                  advanced that position most recently in the  
24                  Supreme Court of Canada as an intervenor in the  
25                  *Federation* case in 2015. This case was the

1                   culmination of a lengthy and still ongoing  
2                   effort to publicly challenge federal *Proceeds of*  
3                   *Crime (Money Laundering) and Terrorist Financing*  
4                   Act regulations. The CBA has steadfastly  
5                   maintained that the proper approach to dealing  
6                   with concerns about money laundering in the  
7                   legal profession must be through independent  
8                   self-regulation so as to ensure that the legal  
9                   profession is not forced into a situation where  
10                  it must spy on clients on behalf of the federal  
11                  government.

12                  The CBABC also remains concerned with the  
13                  extent to which the public has been left with  
14                  the inaccurate and in our view improper  
15                  impression that lawyers have been somehow causal  
16                  of the perceived money laundering crisis in  
17                  British Columbia.

18                  I'll talk a bit about the CBABC's specific  
19                  position on commission evidence. In  
20                  Dr. German's second report, "Dirty Money 2," he  
21                  characterized lawyer trust accounts as "black  
22                  holes" and described solicitor/client privilege  
23                  as something that "lawyers enjoy and zealously  
24                  guard." He said this without reference to the  
25                  privilege actually being enjoyed by members of

1           the public and the fact that lawyers zealously  
2           guard the privilege on behalf of their clients,  
3           members of the public. Solicitor/client  
4           privilege is an ancient and essential aspect of  
5           our legal system that protects private citizens  
6           who seek the advice of lawyers. The CBABC was  
7           pleased to see Mr. German in certain respects  
8           take a softened approach during testimony before  
9           the commission. For example, he explicitly  
10          acknowledged the essentiality and constitutional  
11          importance of solicitor/client privilege.

12                    The CBABC was also encouraged to see  
13           Mr. German acknowledge that the LSBC, the Law  
14           Society, was "leading the way" as compared with  
15           other provinces in terms of AML regulatory  
16           measures. Regarding the so-called no cash rule,  
17           Mr. German maintained a hard line position while  
18           testifying to his view that lawyers should be  
19           limited to the greatest extent possible when it  
20           comes to allowing the deposit of cash into trust  
21           accounts. He also maintained a view that  
22           lawyers should be subject to third party  
23           reporting of cash and suspicious transactions.  
24           But Mr. German offered no suggestion as to how  
25           such a regime could be set up in Canada given

1           the 2015 *Federation* decision and its holding  
2           that the PCMLTFA regime must not apply to the  
3           legal profession. Neither did any other witness  
4           provide the commission with a detailed proposal  
5           as to how third party reporting might be  
6           constitutionally achieved. An external reporting  
7           requirement for lawyers would inevitably breach  
8           solicitor/client confidentiality. Cash and  
9           suspicious transaction reporting would require  
10          documentation and disclosure of the source of  
11          funds to a party outside the Law Society. This  
12          disclosure would necessarily indicate that a  
13          specific person was in the process of seeking  
14          specific legal advice. This dynamic in and of  
15          itself would necessarily constitute a breach of  
16          solicitor/client confidentiality.

17                 Reporting of this kind is also in tension  
18          with a lawyer's duty of loyalty to the client,  
19          which prohibits lawyers from becoming agents of  
20          the state against their clients. Anxiety over  
21          the reporting requirement could dissuade  
22          would-be clients from seeking legal advice out  
23          of fear that doing so would cause them to appear  
24          guilty of a crime. Such a cooling effect of the  
25          solicitor/client dynamic is antithetical, we

1                   say, to a robust and properly functioning legal  
2                   system in a free and democratic society. It  
3                   must be avoided.

4                   Perhaps most telling in Mr. German's  
5                   testimony are the gaps in his analysis. For  
6                   example, Mr. German was forced to concede under  
7                   cross-examination that his views of the legal  
8                   profession and in particular the no cash rule on  
9                   third party reporting requirements were arrived  
10                  at absent any consultation from constitutional  
11                  legal scholars or experts. Of particular note,  
12                  Mr. German provided no conclusive evidence that  
13                  the regulation and administration of lawyer  
14                  trust accounts are causing or exacerbating the  
15                  money laundering problem in BC or anywhere else.  
16                  Neither Mr. German nor any other witness has  
17                  provided compelling evidence to suggest that the  
18                  LSBC's ongoing and evolving regulatory approach  
19                  is insufficient in relation to its purpose in  
20                  stopping and deterring money laundering in BC.

21                  There was no oral evidence from witnesses  
22                  about lawyers in their work or how lawyers  
23                  participate in real estate transactions. Given  
24                  that there was no oral evidence suggesting a  
25                  connection between the work of lawyers or legal

1 processes and the risk of money laundering in  
2 real estate transactions, the CBABC will  
3 provide -- will not provide submissions on that  
4 topic.

5 LSBC is separate -- is a separate party in  
6 these proceedings, and both the CBABC and CDAS  
7 agree with and explicitly adopt the positions  
8 taken by LSBC, especially regarding the  
9 sufficiency of the current regulatory AML regime  
10 for lawyers.

11 At the same time, the CBABC and CDAS  
12 approach this proceeding from a different  
13 vantage point. The CBABC and CDAS are  
14 professional organizations representing lawyers.  
15 The LSB, on the other, is a regulator tasked  
16 with protecting the public interest. We've had  
17 opportunity to review the written submissions of  
18 LSBC and hear their oral submissions. As it is  
19 our obligation in these proceedings pursuant to  
20 our grant of standing not to duplicate the  
21 substance of their material, we won't do so,  
22 other than to say that we broadly support those  
23 submissions.

24 Moving to CDAS. CDAS represents over  
25 200 members of the legal profession and is

1 engaged in advocacy, law reform and education in  
2 matters relating to defence work and the  
3 criminal justice system. It was founded in 2015  
4 by members of the BC criminal defence bar who  
5 identified a gap in the area of law reform for  
6 criminal justice issues specifically affecting  
7 criminal defence lawyers and their clients.

8 As criminal defence lawyers CDAS members are  
9 particularly concerned with the rule of law, the  
10 independence of the bar and the constitutional  
11 rights of the accused individuals we represent.  
12 The work of CDAS is focused in a manner that  
13 recognizes the fundamental importance of those  
14 issues. CDAS has a specific interest in this  
15 proceeding related primarily to a concern that  
16 in a search for solutions to the perceived money  
17 laundering crisis, government and regulatory  
18 actors may be tempted to undertake or engage  
19 increasingly invasive AML measures of unknown,  
20 unproven or even doubtful efficacy. CDAS is  
21 concerned that by engaging these measures  
22 legislatures, police organizations and other  
23 regulatory bodies will unduly and unfairly  
24 trample on the privacy rights of British  
25 Columbians.

1                   With respect to CDAS's position on  
2                   commission evidence I'll begin with asset  
3                   forfeiture. Several witnesses addressed the  
4                   commission on civil and administrative asset  
5                   forfeiture. While Phil Tawtel, the Executive  
6                   Director of BC Civil Forfeiture Offices, touted  
7                   BC's regime, he could not confirm in any  
8                   meaningful way that the process was effective.  
9                   Under cross-examination he admitted there has  
10                  neither been an auditor's review of the regime  
11                  or any other meaningful assessment of the  
12                  regime's effectiveness as it specifically  
13                  relates to money laundering.

14                  Jeffrey Simser, author of the textbook  
15                  "Civil Asset Forfeiture in Canada," testified  
16                  that he was unaware of any research establishing  
17                  that civil forfeiture has been effective in  
18                  detering unlawful activity or combatting money  
19                  laundering anywhere in Canada. Mr. Tawtel also  
20                  confirmed that the vast majority of forfeitures  
21                  in BC involved low value assets, low being less  
22                  than \$75,000 in value. Obtained through the  
23                  administrative forfeiture regime, the commission  
24                  heard that approximately 80 percent of those  
25                  forfeitures occurred in circumstances where

1           property owners had failed to respond to  
2           forfeiture efforts, resulting in a default  
3           forfeiture orders. The takeaway is that a large  
4           volume of assets are being forfeited to the BC  
5           government without the safeguards provided by a  
6           rigorously exercised adversarial process  
7           including judicial oversight. It is therefore  
8           unsafe to assume that default forfeiture are  
9           indicative of any way that the government's  
10          forfeiture efforts are meritorious.

11                   It may well be that the cost associated with  
12          responding to such efforts is simply  
13          prohibitive. After all, legal aid is not  
14          available to those who face asset forfeiture and  
15          lawyers' fees are expensive. Obviously, in many  
16          cases those fees will be more expensive than the  
17          value of the item sought for forfeiture. In  
18          other words, where a property owner is culpable  
19          or not, it may simply not be worth it to contest  
20          asset forfeiture in court.

21                   When this dynamic was put to Mr. Tawtel on  
22          cross-examination, he agreed that whether there  
23          should be a threshold value below which seizures  
24          should not occur was an important issue to  
25          consider but offered no substantive response or

1 counterpoint to the fairness concern raised  
2 before the commission.

3 I move now to unexplained wealth orders.  
4 The commission heard evidence related to  
5 unexplained wealth orders. They've been  
6 considered as a possible addition to BC's AML  
7 arsenal. Anton Mosieinko, a research fellow at  
8 the Centre for Financial Crime and Security  
9 Studies of the Royal United Services Institute,  
10 was called before the commission as an expert in  
11 this area. He described a UWO as "any  
12 legislation that creates a presumption that a  
13 person's property constitutes the proceeds of  
14 crime." The purpose is to both deter money  
15 laundering and to gather intelligence regarding  
16 the same.

17 Mosieinko concluded there exists no  
18 international consensus on the desirability of  
19 UWOs, in general or from a human rights  
20 perspective, and concluded that ultimately there  
21 is a need for more research as to what deterrent  
22 effect, if any, unexplained wealth orders might  
23 have on money laundering if implemented in  
24 Canada. Simser testified that it is hard to  
25 know how suitable or effective UWOs might be in

1           addressing the problem of money laundering in  
2           Canada and added that their use would not be his  
3           "first choice" in combatting money laundering.

4           Moving to enforcement. One recurrent theme  
5           from the evidence of law enforcement officials  
6           that appeared before the commission was the  
7           desperate need for increased resources to be  
8           provided to the police agencies tasked with  
9           investigating money laundering. CDAS does not  
10          dispute the need for further and better  
11          resources to be applied to conventional  
12          investigative policing agencies and favours such  
13          approach over efforts to change in substance the  
14          nature of the regime. It makes little sense to  
15          reject or determine that the current substantive  
16          approach to AML in BC is insufficient if police  
17          agencies have to this point been starved and  
18          left in a position to fail from the get-go. If  
19          the AML crisis persists even after traditional  
20          policing have been properly resourced, then and  
21          only then will it be appropriate to explore  
22          drastically changing and strengthening the  
23          substance of BC's AML regime.

24          In conclusion, the membership of CBABC and  
25          CDAS possess practical knowledge of how and why

1           lawyers do the work they do and the foundational  
2           principles that underline the essential role  
3           that lawyers play in a free and democratic  
4           society. The CDAS membership holds additional  
5           specialized knowledge of the work that criminal  
6           defence lawyers do and, of particular relevance  
7           to this proceeding, an intimate appreciation of  
8           the importance of protecting the privacy rights  
9           of clients who face investigation for criminal  
10          or regulatory misconduct.

11                   Both organizations have attempted to bring  
12           the considerable expertise and knowledge of  
13           their membership to bear at these proceedings in  
14           an effort to raise and illuminate concerns  
15           related to money laundering and potential future  
16           anti-money laundering measures that may be  
17           brought to bear on lawyers and their clients  
18           going forward.

19                   Both organizations agree that the evidence  
20           heard by the commission makes it clear that  
21           money laundering is an ongoing concern in  
22           British Columbia and that appropriate and robust  
23           AML measures and enforcement are called for.  
24           What has been clear, however, is that the  
25           multiple assertions that lawyers are at risk for

1 money laundering are based on theory,  
2 supposition and inference. There is little to  
3 no actual evidence connecting lawyers and their  
4 work to money laundering, and certainly  
5 insufficient evidence to give this commission a  
6 basis for encroaching unconstitutionally  
7 protected rights.

8 In closing, the recommendations that both  
9 CBABC and CDAS outline to this commission and  
10 submit to you, Mr. Commissioner, are the  
11 following: number one, CBABC and CDAS agree  
12 with and formally adopt all the specific  
13 recommendations set out in the LSBC's closing  
14 submissions. Number 2, CBABC and CDAS recommend  
15 that the government refrain from creating a  
16 regulatory AML regime for lawyers or attempting  
17 to apply an existing regulatory AML regime to  
18 lawyers. Unless empirical evidence is produced  
19 that shows a real link between money laundering  
20 and some deficiency in the LSBC's AML regime,  
21 the LSBC regime should be left as the sole  
22 administrator of regulatory AML measures when it  
23 comes to lawyers. 3, CBABC and CDAS recommend  
24 that the commission explicitly recognize the  
25 essential nature and constitutional and legal

1 character of certain foundational elements of  
2 the lawyer/client relationship, namely the  
3 independence of lawyers, the duty of  
4 confidentiality and solicitor/client privilege.  
5 4, CDAS recommends that BC's forfeiture regime  
6 not be expanded absent clear empirical evidence,  
7 of which there is currently none, of the  
8 effectiveness of the current regime in stopping  
9 or discouraging money laundering. 5, CDAS  
10 recommends a minimum volume threshold should be  
11 adopted under which assets may not be seized as  
12 part of BC's forfeiture regime. The  
13 administrative regime in its current form  
14 promotes an unfair process for those who simply  
15 cannot afford to mount a robust defence against  
16 a government forfeiture claim.

17 And finally number 6, CBABC and CDAS  
18 recommend that the BC and federal governments  
19 commit to real and substantial increases in the  
20 resourcing for police investigative agencies  
21 traditionally tasked with fighting money  
22 laundering in Canada. Until the current police  
23 enforcement regime is properly funded, British  
24 Columbians will have no way of knowing whether a  
25 move toward a different and potentially more

1           invasive and coercive AML measures would be  
2           necessary or even appropriate.

3           Those are my submissions, Mr. Commissioner.  
4           Subject to any questions that you may have from  
5           me, that concludes my presentation.

6           THE COMMISSIONER: Thank you, Mr. Westell.

7           I'll now call on Mr. Rauch-Davis on behalf  
8           of the Transparency International Coalition.

9           **CLOSING SUBMISSIONS FOR THE TRANSPARENCY**

10          **INTERNATIONAL COALITION BY MR. RAUCH-DAVIS:**

11           Thank you, Mr. Commissioner. I will say  
12           that I'm joined by my colleague Jason Gratl, and  
13           also co-counsel, although I will be delivering  
14           the formal submissions today on behalf of the  
15           coalition.

16           So I'll begin with the reintroduction of  
17           the entities that make up what has been known  
18           throughout these proceedings as the coalition.  
19           First we have Transparency International Canada.  
20           They are the Canadian division of Transparency  
21           International, a global anti-corruption  
22           non-government coalition. TI Canada's mandate  
23           is to combat corruption across Canada and reduce  
24           the role of Canadian companies and individuals  
25           that contribute to global corruption.

1                   The second entity comprising the coalition  
2                   is Canadians For Tax Fairness. They're a  
3                   non-profit, non-partisan organization that  
4                   advocates for fair and progressive tax policies  
5                   with a mission to raise public awareness of  
6                   crucial issues of tax justice, encourage  
7                   government policies and laws to result in a more  
8                   fair and progressive tax system.

9                   Finally, the third entity that comprises  
10                  the coalition is Publish What You Pay Canada.  
11                  They are part of a global Publish What You Pay  
12                  movement, civil society organizations working to  
13                  make oil, gas and mineral governance open,  
14                  accountable, sustainable, equitable and  
15                  responsive to all people. Publish What You Pay  
16                  Canada today realizes its work through advocacy,  
17                  research and public outreach to promote, achieve  
18                  enhanced disclosure of information about  
19                  extractive industry operations with an emphasis  
20                  on revenues and official ownership information.

21                  In your ruling number 1, Mr. Commissioner,  
22                  on September 24th, 2019, the coalition was  
23                  granted standing as a participate in these  
24                  proceedings in respect of the real estate,  
25                  financial institution and money service and

1 corporate sectors. Before getting to the thrust  
2 of my submission, Mr. Commissioner, there's two  
3 preliminary points I would like to address that  
4 have been raised by other participants. First,  
5 several participants on behalf of professionals  
6 have raised their objection to the coalition's  
7 standing to make submissions on professionals.  
8 The submission as I understand it is that we are  
9 only granted standing in the corporate and real  
10 estate sectors.

11 In response, the coalition submits that it  
12 has not strayed from its grant of standing. The  
13 coalition has been granted standing in the  
14 corporate and real estate sectors. Aside from  
15 the evidence that money laundering is an offence  
16 that crosses borders and sectors, it is now well  
17 established in evidence that professionals,  
18 lawyers, accountants and bankers assist in the  
19 creation and maintenance of corporations as well  
20 as the purchase and sale of real estate assets.  
21 The commingling of these sectors is clear and  
22 coalition's submissions have not strayed beyond  
23 their grant of standing.

24 The second preliminary point I would like  
25 to address is an issue raised with respect to

1 jurisdiction of this commission. In their  
2 submissions Canada has emphasized that this  
3 commission should refrain from making findings  
4 of fact on federal regulators or regulated  
5 entities as that would lead this commission to  
6 matters that are solely within a federal  
7 jurisdiction. The coalition disagrees with  
8 Canada on this point. The coalition recognizes  
9 that this is a provincial inquiry; however this  
10 commission has heard extensive evidence about  
11 the nature of money laundering, and that it's a  
12 complex offence that occurs across borders and  
13 across economic sectors. There has also been  
14 extensive evidence led anti-money laundering  
15 efforts must be coordinated on a national level.

16 Given the complex and multi-jurisdictional  
17 aspect of money laundering and anti-money  
18 laundering measures, the recommendations  
19 relating to money laundering emanating from this  
20 commission must be informed by the evidence  
21 relating to the federal regime. In the interim  
22 report, Mr. Commissioner, you asked for  
23 participants to provide arguments on how to  
24 delineate the jurisdictional limits, scope that  
25 apply to this commission. The coalition has

1           attempted to do so in its reply submissions at  
2           pages 6 and 7 where guidance from the Supreme  
3           Court of Canada in *Keable* is referenced.

4           Without going too far into our written  
5           submissions I will say the court in *Keable* did  
6           not report to restrict provincial inquiries from  
7           ever making factual findings with respect to  
8           federal matters. It is a more nuanced approach  
9           than that. *Keable* line of authorities, in my  
10          submission, cautions provincial inquiries from  
11          straying from the provincial purpose and to  
12          recommending changes to federal law and  
13          regulations. It's further my submission that it  
14          is permissible for this commission to make  
15          findings of fact relating to federal regulators  
16          and regulated entities. One step further, I  
17          would submit that such findings are critical to  
18          the success of this commission.

19          We encourage this commission to occupy its  
20          jurisdiction all the way to its constitutional  
21          limits, particularly given the fact that no  
22          federal regulator or regulated entity was  
23          deprived of the opportunity to participate.

24          While issues of jurisdiction are present in  
25          these proceedings, it is for this precise reason

1           that the coalition in their written submission  
2           calls on this commission to recommend that  
3           Canada initiate a federal assessment moving on.  
4           So those are the two preliminary points I would  
5           like to address.

6                     Now returning to the thrust of our  
7           submissions. The terms of reference for this  
8           commission seek broad findings of fact and  
9           recommendations in respect of money laundering  
10          in British Columbia. In light of this broad  
11          mandate the coalition wishes to emphasize three  
12          points in our submissions. First the terms of  
13          reference demand that findings of fact and  
14          recommendations are not confined to money  
15          laundering viewed solely as an extension of gang  
16          and illicit drug trade activity. The coalition  
17          submits that the broad scope of this inquiry  
18          demands that equal attention is paid to money  
19          laundering as it relates to predicate offences  
20          falling under a white collar crime umbrella with  
21          particular attention paid to crimes of  
22          corruption, tax evasion and the role of the  
23          professional and white collar offences.

24                     Second, in addressing money laundering, the  
25          recommendations and findings of fact resulting

1 from this commission must be cognizant, clear  
2 evidence that the abuse of artificial legal  
3 entities, namely trusts, partnerships,  
4 corporations, represents a critical money  
5 laundering threat in British Columbia and  
6 Canada. The second point informs our final  
7 point, which asks the question of how do we deal  
8 with the threat posed by artificial legal  
9 entities. And the coalition's answer in our  
10 submission is to increase corporate transparency  
11 by creating a publicly accessible beneficial  
12 ownership registry for corporations.

13 Before turning to my first point, I will  
14 say that the coalition's submissions are  
15 generally premised on a central theme, and that  
16 theme is that this commission should focus on  
17 improvements to AML policies and practices where  
18 those improvements are possible. This  
19 commission has heard a variety of evidence on  
20 what features make British Columbia an  
21 attractive place to launder the proceeds of  
22 crime. Some of these features are impossible to  
23 change. Examples are that BC and Canada are  
24 thriving economic hubs with a diverse array of  
25 industry and professionals. Mr. Commissioner,

1           you may recall that Mr. Chrustie gave evidence  
2           on his view that Vancouver was an attractive  
3           place to launder money primarily because of its  
4           large international port. Well, that surely  
5           can't be changed. Similarly Mr. Chrustie and  
6           other enforcement witnesses gave evidence about  
7           the significant procedural protections afforded  
8           to accused persons in Canada, particularly  
9           *Stinchcombe* disclosure. And these features of  
10          our democracy are not subject to regulatory  
11          interference. There are other examples given.  
12          Some of them are summarized in our written  
13          submissions at paragraphs 37 and 38. The point  
14          is that in light of those features that cannot  
15          be changed, and in some cases should not be  
16          changed, when crafting British Columbia and  
17          Canada's anti-money laundering framework the  
18          focus must remain on what can be improved, what  
19          actions can BC and Canada take to improve the  
20          AML landscape in light of those features of the  
21          landscape that cannot and will not be modified.

22                        So with that I will turn to the first point  
23          of our submission, which is relating to the  
24          scope of inquiry and money laundering activity.  
25          So the coalition submits that the findings and

1           recommendations emanating from this commission  
2           must be informed by the fact that money  
3           laundering is not simply an extension of the  
4           illicit drug trade. Money laundering takes its  
5           roots in a variety of predicate offences from a  
6           range of actors in society. On the one hand we  
7           do have the low-level drug dealer exchanging  
8           illicit substances for cash, but on the other  
9           end of the spectrum we also have the established  
10          public servant that siphons cash away from the  
11          public treasury.

12                    To successfully combat money laundering. At  
13          least equal attention and prominence must be  
14          given to the predicate offences relating to  
15          white collar crimes. Now, this may seem like an  
16          obvious point. The coalition, however, points  
17          to the evidence of Professor Levy who set out  
18          that for decades researches in the area of fraud  
19          who observed that policy makers merely paid lip  
20          service to the seriousness of white collar crime  
21          and fraud while concentrating on illegal drugs  
22          trade. That's referenced in his evidence on  
23          June 5th, 2020, before this commission where he  
24          confirms support set out at exhibit 23 at  
25          page 9. Professor Levy's report continues that:

1                    "It is important to recognize that drugs  
2                    have been a priority for law enforcement  
3                    in the UK and overseas for many years and  
4                    as a result more is known about the drugs  
5                    threat than about, for example, organized  
6                    immigration crime or fraud, the true  
7                    scales and significance of which are  
8                    therefore harder to assess."

9                    It's my submission that Professor Levi's  
10                    evidence is also borne out by the enforcement  
11                    evidence that resources and operational capacity  
12                    to target money laundering is limited. The  
13                    historical preference to prioritize  
14                    investigation and enforcement drug offences over  
15                    white collar crime represents a real obstacle to  
16                    the efficacy of Canada's AML regime.

17                    Now, this commission is well placed to deal  
18                    with this obstacle and make strong findings as  
19                    it relates to white collar crimes in  
20                    relationship to money laundering. In  
21                    particular, this commission has heard evidence  
22                    on British Columbia's place within foreign and  
23                    domestic corruption, tax evasion, as well as the  
24                    professional's role in the facilitating of money  
25                    laundering.

1                   On corruption and tax evasion,  
2                   Mr. Commissioner, you may recall Mr. Bullough's  
3                   evidence that while the public may be quick to  
4                   think of certain foreign jurisdictions as  
5                   problematic tax havens the proceeds do not stay  
6                   in those foreign jurisdictions. They end up in  
7                   places like Vancouver. And this is referenced  
8                   at paragraph 13 of the coalition's written  
9                   argument.

10                   And by easily allowing these proceeds of  
11                   crime into our legitimate economy there are a  
12                   number of devastating real effects. This  
13                   commission has heard evidence on the -- that by  
14                   allowing the proceeds of crime into our economy,  
15                   it serves to enable the corruption in tax  
16                   evasion predicate offences. There are also real  
17                   reputational costs in that being known as a  
18                   jurisdiction that allows proceeds of illicit  
19                   crimes can destroy confidence in that  
20                   jurisdiction's financial system and block  
21                   investment and trade. This in turn may increase  
22                   the cost of borrowing, increase taxation and  
23                   distort the allocation of resources to income  
24                   assistance programs or health services.

25                   Then of course there are the real time

1 affects on average Canadians like increased  
2 housing costs with house prices and rental  
3 prices that may inflate and pressure residents  
4 to leave the cities in which they were born.

5 The issue of professionals. The coalition  
6 submits that the evidence clearly supports a  
7 finding that professionals are a key money  
8 laundering threat. At the very least  
9 professionals are enablers, if not intentionally  
10 involved in offences. And as an example of the  
11 evidence we can turn to Dr. German's report  
12 number 1, page 47, and I quote:

13 "In addition to financial institutions, it  
14 is difficult and often impossible, to  
15 launder large amounts of money without the  
16 assistance, witting or otherwise, of  
17 financial or professional intermediaries,  
18 including company formation agents,  
19 accountants and lawyers."

20 Page 47, "Dirty Money" part 1. So we say in  
21 light of this evidence lawyers, bankers,  
22 accountants must all be within the scope of the  
23 recommendations and findings of fact by this  
24 commission.

25 One of the key tasks for this commission is

1           to make findings and recommendations that remove  
2           the ability of these professionals to enable the  
3           money laundering offences. In response to  
4           submissions by other participants, the coalition  
5           submits that it is not tenable to conclude that  
6           accountants pose no risk from a money laundering  
7           perspective. Not only does that submission fly  
8           in the face of the preponderance of evidence  
9           before the commission, we submit that submission  
10          flies in the face of well documented money  
11          laundering schemes where accountants and other  
12          professionals were front and centre, for example  
13          Enron scandal, Panama Papers, Pandora Papers,  
14          which were just recently released this month.  
15          And that's to name a few.

16                 British Columbia and Canada, we know that  
17          accountants, both regulated and unregulated,  
18          provide a vast array of regulatory and  
19          tax-related services for a broad spectrum of  
20          businesses and actual persons. It is not  
21          shocking that a criminal enterprise would work  
22          its way into the mix of those persons or  
23          entities that receive accounting services.  
24          Accountants are not beyond reproach. A finding  
25          that accountants and other professionals pose no

1 money laundering risk is akin to the type of  
2 wilful blindness that led us to these  
3 proceedings. The coalition recognizes the  
4 particular challenge with lawyers as the Supreme  
5 Court of Canada has provided guidance on the  
6 role of solicitor/client privilege within  
7 Canada's AML framework.

8 The Law Society of British Columbia is  
9 statutorily obligated to protect the public. In  
10 meeting that obligation evidence has been heard  
11 about the standards set on legal profession and  
12 other measures taken to ensure no lawyer is  
13 involved in the commission of a criminal  
14 offence, including money laundering. The  
15 coalition's submission is that given the fact  
16 that there can be no public scrutiny of the  
17 solicitor/client relationship, there is an  
18 enhanced public interest in having complete  
19 transparency on the measures the Law Society  
20 takes to ensure lawyers are not facilitating  
21 money laundering.

22 All told, the coalition submits that this  
23 commission should embrace the broad mandate and  
24 tackle the formidable task before it from  
25 recognition of the vast array of acts and actors

1           that contribute to money laundering in British  
2           Columbia. The commission's findings and  
3           corresponding regulatory responses must not view  
4           money laundering as solely an extension of  
5           issues relating to the gaming, gangs and drug  
6           trade.

7                     Taking me to my second point. And that's  
8           the threat of artificial legal entities. So the  
9           evidence before this commission supports the  
10          conclusion that artificial legal entities --  
11          again by that I mean corporations, partnerships,  
12          trusts -- represent a critical money laundering  
13          threat that transcends specific sectors of the  
14          money laundering and anti-money laundering  
15          landscape in Canada. For example, Panama Papers  
16          and now the Pandora Papers illustrate one way in  
17          which the creation of anonymous shell companies,  
18          complex trust arrangements can distort ownership  
19          information, ultimately provide criminals with a  
20          mechanism to secretly hide ill-gotten assets.  
21          The creation of legal structures enables the  
22          criminal to be removed from the predicate  
23          offence and ill-gotten funds while  
24          simultaneously cloaking the asset with  
25          legitimacy.

1                   The evidence -- pardon me, Mr. Commissioner,  
2                   the evidence on the threat that artificial legal  
3                   entities pose is summarized in the coalition's  
4                   written submission, paragraphs 55 to 73. To  
5                   provide a brief summary of some of the points of  
6                   evidence, I'll begin with the FATF, the 2016  
7                   "Mutual Evaluation Report." Page 102 of that  
8                   report sets out that legal entities and legal  
9                   arrangements of Canada are at a high risk of  
10                  being abused for money laundering purposes.

11                  Mr. Commissioner, you heard evidence from a  
12                  CISC panel. Included in that evidence was that  
13                  private sector businesses represented the most  
14                  prevalent typology in money laundering  
15                  associated with crime groups believed to be  
16                  engaged in money laundering. Inadequate  
17                  beneficial ownership transparency. Canada is a  
18                  significant enabler for money laundering through  
19                  real estate. That's also from the CISC panel.  
20                  And they also said that the lack of beneficial  
21                  ownership information is a challenge in their  
22                  assessment of organized crime groups. This is  
23                  again all referenced in our written submissions  
24                  at paragraph 64 through 66.

25                  Dr. Schneider gave evidence suggesting the

1 abuse of legal entities by criminals, saying  
2 that was very typical in the layering stage of  
3 money laundering. Dr. Cockfield last spring  
4 suggested that Canada's weak beneficial  
5 ownership regime made an attractive target for  
6 money laundering and global criminals. And then  
7 of course we have Dr. German, who in his oral  
8 evidence supported a publicly available  
9 beneficial ownership registry to increase  
10 transparency.

11 In my submission the evidence before the  
12 commission is clear that criminals who routinely  
13 abuse legal entities persist in laundering their  
14 ill-gotten funds. British Columbia and Canada  
15 remain an ideal jurisdiction to set up  
16 corporations due to our ease of incorporation  
17 and weak corporate transparency.

18 This leads to the third and final point for  
19 my submission, and that's the benefits of  
20 increasing corporate transparency. So the  
21 coalition submits that increasing corporate  
22 transparency by creating a publicly accessible  
23 beneficial ownership registry is the key  
24 regulatory measure that can be taken to  
25 adequately respond to the money laundering

1 threat posed by artificial legal entities. The  
2 current status quo in Canada of allowing  
3 companies to incorporate anonymously en masse is  
4 without moral or legal justification and only  
5 serves to perpetuate the use of corporate  
6 vehicles for criminal enterprise. Conversely,  
7 we submit that corporate transparency through a  
8 publicly available beneficial ownership registry  
9 has a cascade of beneficial effects, and those  
10 benefits are set out at paragraph 119 of the  
11 coalition's submissions. It includes providing  
12 a reliable source of beneficial ownership  
13 information to law enforcement and other  
14 regulatory investigative bodies.

15 Providing a new and simple offence akin to  
16 fraudulent reporting that provides law  
17 enforcement with a means to target the  
18 underlying predicate crimes and potentially  
19 seize assets. Deterring criminals from using  
20 corporations or real estate to launder their  
21 funds, as criminals will know that many eyes  
22 will be on them and their ill-gotten funds.  
23 Enabling journalists and citizens from all  
24 jurisdictions to inspect and report on the true  
25 beneficial owners, which thereby increases the

1 chance of detecting money laundering activities  
2 and the underlying predicate crimes.

3 Increasing detection by creating an easily  
4 accessible avenue of investigative ground.  
5 Allowing reporting entities under the PCMLTFA,  
6 including financial institutions and other  
7 professionals, consistent, reliable source of  
8 information for the customer due diligence  
9 obligations and removing the defence of  
10 plausible deniability to those professionals  
11 that act as ownership firms and enablers.  
12 Finally, it also has the added benefit of  
13 increasing the ability of domestic and  
14 international law enforcement agencies to obtain  
15 evidence of money laundering sourced from  
16 authoritarian and corrupt regimes.

17 As heard by this commission, public  
18 registries are also becoming more and more  
19 common throughout the world. We have the UK  
20 person of significant control register, the  
21 European Union fifth AML directive, now the BC  
22 *Land Owner Transparency Act*. In Canada the  
23 federal government this year has announced plans  
24 for a publicly available corporate registry by  
25 2025. In Quebec Bill 78 passed spring and

1 summer, creation of a beneficial ownership  
2 registry for companies carrying on businesses in  
3 Quebec, submit beneficial ownership information  
4 for a registry. That registry is publicly  
5 available as well, also free of charge.  
6 Ultimately our submission is that BC should  
7 follow suit and work with the federal government  
8 in creating a publicly accessible corporate  
9 beneficial ownership registry.

10 Now, the mechanics of the registry are set  
11 out in some detail in our written submissions.  
12 I do not propose to review all of those features  
13 now. Of primary importance in our submission is  
14 that the registry be publicly available,  
15 publicly accessible. And there are four main  
16 reasons I'll refer to. First is that public  
17 accessibility enables NGOs, journalists and  
18 civilians to access and report on the content of  
19 the registry. The evidence before this  
20 commission supports the conclusion that most  
21 large-scale money laundering operations are not  
22 discovered by enforcement, they're discovered by  
23 journalists and NGOs. The Panama Papers, the  
24 Pandora Papers, the FinCEN files, all  
25 journalists. Even this commission, in my

1            submission, was sparked after a journalist wrote  
2            on the problems with the BC casinos and what we  
3            now know as the Vancouver Model of money  
4            laundering.

5            So a publicly available registry will  
6            empower these types of public actors while a  
7            private registry does not. Second, it's our  
8            submission that a public registry provides  
9            reporting entities with a tool to meet their  
10          know your client obligations under FINTRAC,  
11          particularly beneficial given the recent  
12          amendments that now place beneficial ownership  
13          know your client obligations on all reporting  
14          entities.

15          The third benefit of public availability  
16          is from -- are the high level economic  
17          advantages. Exhibit 289 is the United Kingdom's  
18          Department for Business, Energy and Industrial  
19          Strategies "Review of the Implementation of the  
20          Person of Significant Control Register." In  
21          there the high level utility, economic utility  
22          of the PSC register is set out in some detail.  
23          They are summarized at paragraph 123 of our  
24          written submissions. I will not go into them in  
25          great detail right now, but I would say that the

1 evidence from the UK is that the publicly  
2 available register there is very useful and  
3 economically advantageous for small and large  
4 businesses alike. We're now able to know who  
5 you're hiring, who you're contracting with, who  
6 you're doing business with. These types of  
7 advantages.

8 The fourth benefit of public availability  
9 is that it improves the veracity of information  
10 on the register. The true power of corporate  
11 transparency comes from the many eyes principle.  
12 A person's behaviour is modified when they know  
13 what they're doing is plainly visible to many.  
14 For criminals that means that if they know many  
15 eyes are watching them, they know there's an  
16 increased risk of being caught and are less  
17 likely to engage in that behaviour.

18 A good example of this type of deterrent is  
19 seen in the UK. The evidence of James Cohen,  
20 Dr. Sharman, Mr. Bullough was that after  
21 Scottish limited partnerships were added to the  
22 person of significant control register, there  
23 was an immediate decline in the registration of  
24 Scottish limited partnerships with a  
25 corresponding increase in Northern Ireland.

1                   Now, with public accessibility, the  
2                   coalition acknowledges that the creation of this  
3                   type of registry engages some privacy  
4                   considerations. The coalition's written  
5                   submissions have a detailed privacy analysis  
6                   beginning at paragraph 168. Ultimately the  
7                   submission with respect to privacy is that  
8                   information collected and disclosed in the  
9                   proposed registry raises minimal privacy  
10                  interests. If information does trigger a  
11                  charter protected right then the coalition  
12                  submits that such a minimal impairment is  
13                  justified in having consideration of the far  
14                  reaching benefits and purposes of the proposed  
15                  registry.

16                  In addition, the coalition points to  
17                  certain steps that can be taken to ensure  
18                  charter compliance. And those are again set out  
19                  in the written submissions, and includes the  
20                  potential tiering of information, allowing  
21                  access to some information to the public and  
22                  then all information to law enforcement. And  
23                  also potential for the carve out for those  
24                  persons with a sufficiently serious interest in  
25                  having their information removed from the

1           proposed registry. The detailed submissions on  
2           this point are set out in the coalition's  
3           written submissions.

4           To conclude my submissions on the public  
5           access of the registry, the coalition submits  
6           that steps can be taken to ensure the utility of  
7           the registry while maintaining sufficient  
8           protection of any minor privacy interests that  
9           are engaged. However, to ensure the efficacy of  
10          the registry, it's absolutely critical that it  
11          have public access.

12          With that, it takes me to my conclusion. I  
13          submit that this commission is well placed to  
14          make recommendations on how best to shape BC's  
15          anti-money laundering landscape. The coalition  
16          stresses that this commission's findings and  
17          recommendations must be mindful of its broad  
18          mandate. A publicly accessible beneficial  
19          ownership registry represents a cross-sector,  
20          cross-border improvement that will drastically  
21          improve BC's anti-money laundering landscape.  
22          Subject to any questions, Mr. Commissioner,  
23          those are the coalition's submissions.

24          THE COMMISSIONER: Thank you, Mr. Rauch-Davis. I  
25          appreciate your submissions. I have no

1 questions of you.

2 Mr. McGowan, I think we're now in a  
3 position where some of the participants with a  
4 broad grant of standing have reserved a portion  
5 of their submission time to -- for a response,  
6 and as I understand it, we would commence with  
7 the British Columbia Lottery Corporation and if  
8 you could inform me of the time that is allotted  
9 to them

10 MR. MCGOWAN: Yes, Mr. Commissioner. You're correct  
11 the British Columbia Lottery Corporation is  
12 first, and by my note, they had four minutes  
13 remaining of their allotted time, although of  
14 course with the opportunity to seek a bit of  
15 additional time if needed.

16 THE COMMISSIONER: Mr. Smart, I take it four minutes  
17 may not be adequate for your response.

18 MR. SMART: Yes, Mr. Commissioner. I have five  
19 relatively brief points that BCLC wishes to  
20 respond to. And I just need a few additional  
21 minutes to those four, I believe.

22 THE COMMISSIONER: All right. That's fine.

23 **REPLY FOR THE BRITISH COLUMBIA LOTTERY CORPORATION**

24 **BY MR. SMART:**

25 So the first is the issue concerning Great

1 Canadian not reporting transactions under  
2 \$50,000. Great Canadian submitted -- and I'm  
3 quoting --

4 "Neither BCLC nor GPEB sought fit to  
5 ensure there was a change in procedures,  
6 which indicates they did not consider it  
7 to be particularly egregious."

8 With all respect to Mr. Skwarok's able  
9 submissions, BCLC disagrees with this  
10 submission. BCLC investigators made repeated  
11 efforts to have GPEB -- or to have Great  
12 Canadian correct this erroneous practice  
13 beginning in 2011 when BCLC first discovered  
14 this was occurring. And they did so again in  
15 2015 when the BC Lottery Corporation learned  
16 that the practice is not ceased.

17 On both occasions BCLC reminded Great  
18 Canadian of its obligations to report all  
19 suspicious transactions regardless of the amount  
20 in accordance with training provided by BCLC.  
21 And we've addressed this at paragraph 20 of our  
22 reply submissions, written reply submissions.

23 Mr. Commissioner, the second point I wish  
24 to address is the allegations by the BCGEU.  
25 They made a series of allegations about BCLC,



1                   Mr. Alderson's email, exhibit 1034. When I say  
2                   his email, it's a document that apparently is  
3                   put together from emails. Mr. Alderson's  
4                   counsel alleged that the emails contained in  
5                   this document constituted a threat by someone at  
6                   BCLC to Mr. Alderson to keep his mouth shut.  
7                   Aside from questions as to the authenticity of  
8                   this document, there is no clear evidence the  
9                   emails were sent by someone at BCLC and most  
10                  importantly -- and this is what we want to  
11                  emphasize -- the emails don't threaten  
12                  Mr. Alderson or purport to tell him to keep his  
13                  mouth shut. In fact the most recent email in  
14                  that document does just the opposite. It says,  
15                  please tell the truth.

16                         The fourth point is the GPEB spreadsheet.  
17                         Mr. Meilleur's defendant's counsel referred to  
18                         the spreadsheet that was prepared and presented  
19                         to Mr. Meilleur in August of 2015 as being the  
20                         pivotal moment for GPEB. Of course pivotal  
21                         moment was the term or expression used by  
22                         Mr. Lightbody, what he learned in July of 2015  
23                         as a result of the E-Pirate investigation. But  
24                         the creation of this spreadsheet and its  
25                         apparent impact on GPEB's senior management

1 raises the obvious question: why wasn't it  
2 prepared months before or a similar spreadsheet  
3 prepared months before if not years before  
4 August of 2015; why did the pivotal moment for  
5 GPEB only occur in August of 2015. After all  
6 the spreadsheet merely documented the  
7 information reported to GPEB by service  
8 providers of BCLC for many years.

9 And the last point that we wish to address  
10 is that you've heard submissions from the  
11 various participants, Mr. Commissioner, looking  
12 forward to your recommendations. And BCLC does  
13 as well. But in our submission the value of  
14 this inquiry is much more than just the  
15 important recommendations that you will  
16 ultimately make. The very existence of this  
17 inquiry, the months of evidence you have heard  
18 has already in our submission accomplished much.  
19 It has placed a spotlight on money laundering in  
20 the province for most of the last two years.  
21 It's helped educate the public, businesses and  
22 organizations about the risk of money laundering  
23 and the social and economic consequences of  
24 money laundering. The intense public scrutiny  
25 this inquiry has brought to the subject of money

1           laundrying has already had, in our submission  
2           and will continue to have, a positive impact in  
3           reducing the risk of money laundrying in the  
4           future. So while we join with others that your  
5           recommendations are of critical importance, with  
6           respect, this public inquiry has already  
7           accomplished much.

8           And I'll close on behalf of BCLC by stating  
9           that it agrees with the province that GPEB, BCLC  
10          and law enforcement now have a cooperative  
11          positive relationship and they are working  
12          together collaboratively to address the risks of  
13          money laundrying in this province. Much has  
14          been accomplished in the recent years in the  
15          gaming sector and BCLC is committed to do its  
16          part to continue those efforts and to maintain  
17          these collaborative relationships in the future.  
18          Thank you, Mr. Commissioner.

19          THE COMMISSIONER: Thank you, Mr. Smart.

20                 I'll now turn to Canada, and, again,  
21                 Mr. McGowan, if you could tell me what time  
22                 Canada has left, that would be helpful.

23          MR. MCGOWAN: Yes, Mr. Commissioner. My note is that  
24                 they had 12 minutes remaining from their initial  
25                 allotment.

1 THE COMMISSIONER: All right. Thank you. Mx. Wray,  
2 do you require more than time than that?

3 MX. WRAY: No, Mr. Commissioner. In fact I think  
4 I'll be done in much less time than that.

5 THE COMMISSIONER: All right. Thank you. Please  
6 carry on.

7 **REPLY FOR THE ATTORNEY GENERAL OF CANADA BY MX. WRAY:**

8 I do just have four brief remarks that I  
9 would like to make in reply today. My first  
10 point in reply to the oral submissions of the  
11 gaming participants generally. A number of  
12 those participants repeated the assertion that  
13 there was a gap in law enforcement in dealing  
14 with potential money laundering at legal casinos  
15 prior to 2015. Canada has already addressed  
16 this assertion in our written submissions and I  
17 don't want to repeat those, but I do want to  
18 point the Commissioner to the relevant  
19 paragraphs.

20 In Canada's written closing submissions in  
21 chief, the relevant paragraphs are  
22 paragraphs 152 to 167. And in Canada's written  
23 response to the gaming participants, the  
24 relevant paragraphs are 13 to 45. In our view  
25 these paragraphs in our written submissions are

1 providing what we say is a much fuller, factual  
2 context than what the gaming participants have  
3 offered with respect to the activities of law  
4 enforcement during that time frame.

5 My second point is in reply to the  
6 submissions of the chartered professional  
7 accountants organizations. In their oral  
8 submissions on Friday, each of those  
9 organizations took issue with Canada's written  
10 response in which we question their assertion  
11 that chartered professional accountants pose a  
12 low risk when it comes to money laundering  
13 activities. For clarity's sake, the reason that  
14 we questioned this assertion in our response is  
15 because there's no evidence before the  
16 Commissioner that conclusively supports the  
17 assertion that accountants pose a low risk.

18 Instead, the Canadian professional  
19 accountant organizations in making this  
20 assertion are asking the Commissioner to infer  
21 that a lack of evidence about accountants and  
22 their relationship to money laundering equates  
23 to evidence that accountants pose a low risk.  
24 In our view it would not be appropriate for the  
25 Commissioner to find that a lack of evidence is

1                   synonymous with a lack of risk.

2                   My third point in reply is in reply to the  
3                   BCCLA's submissions regarding the importance of  
4                   protecting privacy rights in anti-money  
5                   laundering initiatives. I want to reiterate  
6                   that Canada entirely agrees with the BCCLA that  
7                   all anti-money laundering measures must respect  
8                   the rights and freedoms protected by our  
9                   charter. We've set out in Canada's written  
10                  opening and closing submissions that the federal  
11                  regime, including the *Proceeds of Crime Act*,  
12                  strives to balance the privacy rights of  
13                  Canadians with robust anti-money laundering  
14                  measures. Indeed Canada's commitment to this  
15                  balance was stated by a number of federal  
16                  witnesses who testified before the commission.

17                  And finally my fourth point is in reply to  
18                  the submissions of Transparency International.  
19                  To the extent that this coalition is suggesting  
20                  that Canada has argued that the commission may  
21                  not make findings of fact with respect to  
22                  federal entities, that is not an accurate  
23                  representation of Canada's submissions on the  
24                  jurisdiction of this commission. In fact our  
25                  submissions were precisely the opposite. It is

1           indeed appropriate and necessary for this  
2           commission to make findings of fact with respect  
3           to the federal anti-money laundering regime.  
4           Constitutionally, the Commissioner is not  
5           precluded from making factual findings about  
6           federal entities and the federal regime under  
7           which they operate. These observations are  
8           necessary in order to explain what took place  
9           during the relevant time frame under  
10          consideration by the Commissioner. And of  
11          course our participation in this inquiry has  
12          been directed at ensuring that the Commissioner  
13          has these relevant facts.

14                 And just in closing as a number of the  
15          participants have done, I do want to thank again  
16          the Commissioner, commission counsel, commission  
17          staff, as well as all of the participants in  
18          this commission for the diligent work over the  
19          past two years to elucidate the complexities of  
20          money laundering in British Columbia. The  
21          spirit of cooperation and collaboration that has  
22          characterized each step of this process I think  
23          serves as a model for dealing with money  
24          laundering itself. A number of participants  
25          have noted in their oral submissions that

1           effectively tackling the issues before this  
2           commission requires not only a comprehensive  
3           understanding of the nature of money laundering  
4           risks but a collaborative and continually  
5           evolving approach to address those risks. The  
6           work of this commission and the awareness that  
7           it's raised about the threats posed by money  
8           laundering will assist government and industry  
9           partners in identifying areas for further and  
10          continued collaboration.

11                 Canada looks forward to future  
12           opportunities to work with private stakeholders,  
13           public interest organizations, the provincial  
14           government and our international partners in  
15           order to combat the many ways in which money  
16           laundering impacts all Canadians. Thank you  
17           again, Mr. Commissioner, for affording Canada  
18           the opportunity to participate in this  
19           unprecedented inquiry.

20           THE COMMISSIONER: Thank you, Mx. Wray.

21                 I'll now turn to the government of British  
22           Columbia, and, again, Mr. McGowan, if you can  
23           indicate to me what time is left to them.

24           MR. MCGOWAN: Yes, by my note, 21 minutes.

25           THE COMMISSIONER: All right. Ms. Hughes, do you

1           require any additional time for that?

2           MS. HUGHES: No, Mr. Commissioner.

3           THE COMMISSIONER: All right. Thank you.

4           **REPLY FOR THE PROVINCE OF BRITISH COLUMBIA BY MS. HUGHES:**

5           Thank you. The province makes three  
6           overarching responses to various participants'  
7           submissions, and then I will deal with one  
8           additional issue that we were invited by  
9           commission counsel to address in this reply.

10          Turning first to the BCCLA submission and  
11          also that of Mr. Jin, both of those participated  
12          noted that constitutional issues may well  
13          intersect with recommendations to be made in  
14          this inquiry, including in particular in respect  
15          of civil forfeiture matters, some of which are  
16          also presently before the courts in BC. The  
17          province agrees with the BCCLA that the  
18          commission can make factual findings about, for  
19          example, unidentified wealth orders based on the  
20          evidence you heard about their use in otherwise  
21          jurisdictions but ought not to be making  
22          findings about the constitutionality of  
23          potential UWO legislation. And so in light of  
24          this, we are cautioned and suggest the  
25          commission ought to refrain from commenting on

1           the constitutionality of proposed  
2           recommendations. And that's dealt with,  
3           Mr. Commissioner, in paragraphs 15 to 17 of our  
4           written reply submissions in the non-gaming  
5           sectors. And as we note in particular at  
6           paragraph 17 of those submissions just as the  
7           courts will decline to determine constitutional  
8           issues in the absence of a proper factual  
9           foundation, so too should this commission  
10          decline to opine on constitutional issues of an  
11          existing or potential legislation or policy in  
12          the abstract.

13                 I turn next to the province's response to  
14          Mr. Kroeker's submissions. And in particular in  
15          his closing submissions, Mr. Kroeker made a  
16          submission to the effect that -- my note was  
17          something along the lines of the hard-working  
18          people at BCLC were regularly viewed with  
19          suspicion and distrust by GPEB. That is in our  
20          submission a significant allegation to make for  
21          the first time in oral argument and in the  
22          absence of any evidentiary support. Indeed the  
23          evidence does not establish a regular pattern on  
24          GPEB's part of viewing BCLC with suspicion or  
25          distrust. That is, in our submission, an

1           overstatement. The evidence was clear that  
2           there were at times conflicting personalities  
3           within both BCLC and GPEB. And indeed  
4           Mr. Scott's evidence was that at the outset of  
5           his time as General Manager for GPEB in 2011, he  
6           perceived there to be an organizational  
7           arrogance on the part of BCLC that it was  
8           dismissive of GPEB's concerns and held a view  
9           that GPEB was not at the same level as BCLC.  
10          Thankfully, as Mr. Scott testified, this  
11          improved over the course of his tenure, and,  
12          Mr. Commissioner, I'll give you the evidentiary  
13          cite for that evidence. It's found in  
14          Mr. Scott's transcript at page 179, line 6  
15          through page 180, line 6.

16                 Mr. Kroeker's assertion that GPEB regularly  
17                 treated BCLC with suspicion and distrust is also  
18                 not consistent with his own assertion made in  
19                 paragraph 50 of his written submission that his  
20                 efforts to establish a more positive  
21                 relationship between BCLC and GPEB paid off and  
22                 that he absolutely did foster a better  
23                 relationship with GPEB over the course of his  
24                 tenure with BCLC.

25                         And regardless, it was GPEB's role as the

1 regulator to critically analyze BCLC's  
2 proposals, ask questions, push back where  
3 necessary and consider issues from a broader  
4 perspective. That GPEB may not have agreed with  
5 or supported all of BCLC's proposals does not  
6 amount, in our submission, to suspicion or  
7 distrust.

8 Mr. Kroeker also advanced a submission in  
9 his closing argument to the effect that GPEB's  
10 August 2017 ministerial briefing caused the  
11 minister to be skeptical of BCLC and to distrust  
12 information from BCLC. That submission is not  
13 in our submission borne out in the evidence.  
14 Unwillingness on the part of the minister to  
15 prefer BCLC's view over GPEB's does not amount  
16 to distrust. Regardless, the minister was clear  
17 in his evidence as to his impressions from  
18 GPEB's 2017 briefing to the effect that he  
19 didn't know which organization he could rely on  
20 and suspected that the truth lay somewhere in  
21 between the two perspectives. This is addressed  
22 in GPEB's reply submissions at paragraph 59, and  
23 you'll find the pinpoint cite to the transcript  
24 there.

25 And finally GPEB's response to

1 Mr. Kroeker's submissions regarding allegations  
2 of delay on the part of GPEB is found in  
3 paragraphs 61 to 70 of the province's reply  
4 submissions.

5 The province makes one point in reply to  
6 BCLC's oral submissions. Here GPEB asks the  
7 Commissioner not to give any weight to BCLC's  
8 characterization of GPEB's efforts in the  
9 pre-2015 time frame as "not trying very hard"  
10 based on one legal opinion having been provided  
11 on a short timeline. We say that such a  
12 characterization is not borne out on the whole  
13 of the evidence regarding GPEB's efforts to deal  
14 with suspicious cash being brought into BC  
15 casinos and is also not consistent with  
16 Mr. Meilleur's specific evidence about the legal  
17 advice he received. Indeed Mr. Meilleur  
18 testified that he and other members of GPEB's  
19 executive had numerous meetings with LSB counsel  
20 in which they gave advice consistent with the  
21 2015 opinion. And the transcript cite for that,  
22 Mr. Commissioner, is Mr. Meilleur's March 10th  
23 evidence at page 188, line 6, through page 189,  
24 line 25. And of course the advice contained in  
25 the 2015 opinion was also consistent with that

1 of Dr. German's 2016 opinion.

2 I turn now, Mr. Commissioner, to deal with  
3 the matter I alluded to earlier, one which  
4 commission counsel has invited us to address in  
5 these reply submissions, and this pertains to  
6 the two expert reports tendered by BCLC from  
7 Ernst & Young. And so in an effort to be of  
8 assistance to the Commissioner and provide a  
9 countervailing view that would otherwise be  
10 absent, the province made submissions in its  
11 reply noting various factors that may bear on  
12 the weight to be given to those two reports.

13 There was of course no obligation on the  
14 province to address the E&Y report in any detail  
15 in its initial written submissions. The  
16 province was entitled to see what reliance that  
17 the participants would place on those reports  
18 and respond in reply. We're advised that BCLC  
19 has been provided a right of written response to  
20 the points raised by the province, and we were  
21 invited, as I indicated, to provide our reply in  
22 oral submissions today. As such, we make the  
23 following three brief points in response.

24 First, with respect to Ernst & Young's history  
25 of prior engagement by BCLC, commission counsel

1 canvassed the financial arrangements around that  
2 with Mr. Boyle in their examination. There was  
3 no need for the province to do so, and nothing  
4 ought to be drawn from the province's failure to  
5 duplicate evidence already adduced. The  
6 province merely notes this as a factor going to  
7 weight, not to impute any improper conduct.

8 Courts have long recognized that an interest  
9 on the part of a witness, whether pecuniary or  
10 otherwise, affects the weight that can be given  
11 to that witness's evidence and arises not out of  
12 any wrongdoing but simply from recognition that  
13 even honest people naturally intensify a little  
14 in the direction in which their interests point.

15 Second, BCLC takes issue with the province's  
16 characterization of the basis for Mr. Boyle's  
17 evidence as being anecdotal. The province  
18 maintains this characterization and that it  
19 accords with Mr. Boyle's evidence. He agreed  
20 the operator practices section of his report was  
21 populated anecdotally. The cite for that  
22 evidence is in Mr. Boyle's transcript on page  
23 32, line 25 to page 33, line 11.

24 BCLC points to conversations with industry  
25 participants in a 2016 American Gaming

1 Association report that was based on survey  
2 evidence and interviews to refute the anecdotal  
3 characterization. That does not change the  
4 underlying nature of the evidence. The surveys  
5 and interviews remain anecdotal in nature. More  
6 importantly, in light of the way in which the  
7 gaming jurisdictions are defined in the report  
8 is simply that's the necessary specificity of  
9 time, various policies, procedures and operators  
10 and jurisdictions together to provide a more  
11 definitive foundation for the opinions that  
12 Mr. Boyle gave us as to the uniqueness of BCLC's  
13 AML efforts.

14 At the end of the day the weight that can be  
15 given to the AML practices report depends on the  
16 extent to which the facts and assumptions that  
17 form the foundation for it are established in  
18 the evidence. And in the province's submission,  
19 the anecdotal nature of the basis for the report  
20 and the lack of proof before this commission of  
21 some of those underlying facts and assumptions  
22 lays it essentially on the same footing as the  
23 Malysh report.

24 Third and most importantly, the province  
25 notes that none of the points made in BCLC's

1 written reply address the AML practices report's  
2 failure to in turn address the relative risk  
3 faced by BCLC at any relevant point in time  
4 compared with the risk profiles in other  
5 jurisdictions. This was confirmed by Mr. Boyle  
6 in his evidence, and that's found at page 37 of  
7 his transcript, line 19 through page 38, line 1.  
8 And it's simply the province's submission here  
9 that some consideration of the various risk  
10 profiles existing in the difference  
11 jurisdictions Mr. Boyle surveyed would have been  
12 of assistance to the commission in weighing  
13 Mr. Boyle's opinion. This is particularly the  
14 case given the reliance on risk-based frameworks  
15 for AML measures and the acknowledgement that  
16 there is no one size fits all approach.

17 The final point I make in reply is of a  
18 more general nature. Some participants  
19 challenged various aspects of the evidence by  
20 way of a strict application of the rules of  
21 evidence in an attempt to undermine evidence  
22 inconsistent with their theories. And one  
23 example here flows from Gateway's submissions  
24 regarding GPEB's letter from April 2010 and  
25 which Gateway says ought not to be given any

1 weight on the basis of hearsay. Now, of course  
2 Gateway makes that submission in order to  
3 maintain the contention that it had no reason to  
4 believe patron buy-ins were proceeds of crime.  
5 Gateway did not cross-examine Mr. Dickson on  
6 this letter, and there's no basis in the  
7 evidence to challenge his -- to cast doubt on  
8 his unchallenged evidence.

9           Regardless, the commission is not bound by  
10 the strict application of the rules of evidence  
11 and absent express rulings of admissibility such  
12 as the one that, Mr. Commissioner, you made in  
13 respect of exhibit R to Mr. Alderson's  
14 affidavit, the commission is entitled to  
15 consider, assess the reliability of and weigh  
16 all of the evidence before it. That of course  
17 includes the evidence from witnesses, the  
18 reports we just spoke of and the whole of the  
19 totality of the evidence before you.

20           The province closes its submissions by  
21 again thanking you, Mr. Commissioner, commission  
22 staff and counsel, along with all of the other  
23 participants and their counsel teams for all of  
24 their hard work over the past two years. We  
25 recognize that there is still much work ahead

1           for the commission and its team in terms of  
2           producing the final report. But we agree with  
3           BCLC that much work has already been done and  
4           British Columbians have already and will  
5           continue to benefit from this collective effort.  
6           Thank you, Mr. Commissioner. Those are the  
7           province's submissions.

8           THE COMMISSIONER: Thank you, Ms. Hughes.

9                     Mr. McGowan, I take it that brings us to  
10           the end of the oral submissions. Is that  
11           correct?

12           MR. MCGOWAN: It does, Mr. Commissioner.

13           THE COMMISSIONER: All right. Thank you. I think it  
14           might be appropriate for me to make a few  
15           comments at this stage.

16                     As the commission has reached this  
17           milestone, it seems appropriate for me to make a  
18           few comments. As everyone knows, the commission  
19           was established by order in council on May 15th,  
20           2019. It commenced its formal efforts to engage  
21           with the issues with public meetings in  
22           Vancouver, Richmond, Kelowna, Victoria and  
23           Prince George in October and November of 2019.

24                     The hearing process began with applications  
25           and opening statements of participants who were

1 granted standing in October 2019 followed by the  
2 commencement of the evidentiary hearings in May  
3 2020, which ran through to September 14th of  
4 2021, culminating in these oral submissions over  
5 the last three days, that is Friday, Monday and  
6 today.

7 In total, there were 198 witnesses called  
8 over 133 evidentiary hearing days. There were  
9 1,063 exhibits marked, which are comprised of  
10 over 70,000 pages. There have been over  
11 20,000 pages of transcript produced and posted  
12 to the commission's website. Other the course  
13 of the commission's hearings, I've issued  
14 37 written rulings, 36 of which have been posted  
15 to the website. The effort that has gone into  
16 this commission has been very considerable, and  
17 the product of some very dedicated people whom  
18 I'd like to acknowledge.

19 Many of those people have worked diligently  
20 behind the scenes to keep the commission on its  
21 path. Those people have included Shay Matters,  
22 who has handled the complexities of holding  
23 virtual hearings given the difficulties we  
24 confronted with the pandemic; Linda Peter, who  
25 has doubled as my assistant and who has also

1           played a very significant role in organizing and  
2           managing the hearings. Phoenix Leung, who has  
3           served as the commission's registrar taking care  
4           of the many volumes of exhibits and the conduct  
5           of the hearings; Mary Williams, who has  
6           performed a broad range of duties in the office  
7           and throughout the hearings and before.

8           Dr. Leo Perra, the Executive Director; and  
9           Cathy Stooshnov, the head of administration who  
10          brought a strong presence to organizing and  
11          ensuring that the commission worked effectively  
12          throughout; Scott Kingdon and John Lunn who  
13          provide many behind the scenes duties for the  
14          commission.

15          I'd also like to acknowledge the heroic  
16          efforts of all the commission counsel who have  
17          done a truly remarkable job of organizing and  
18          presenting the evidence before the commission.  
19          The effort involved has been tremendous and  
20          clearly called on superior skills and resources  
21          throughout the life of the commission.

22          I think it's also very important to  
23          acknowledge the work put in by the various  
24          participants and their counsel who have worked  
25          tirelessly and responded admirably to the

1 demands of the commission counsel and of the  
2 commission in bringing their skills and ability  
3 to bear on the many issues that have arisen over  
4 the course of the last few years. I think as  
5 Ms. Hughes pointed out, there's still much to be  
6 done for the commission and myself, but the work  
7 done by commission participants and their  
8 counsel has provided a great deal of assistance  
9 in gaining an advantage on the work that remains  
10 to be done.

11 So I think we're at a stage where while  
12 we're by no means finished the efforts of the  
13 commission, we're at a stage where some may down  
14 tools now and with the thanks of -- my thanks  
15 and the thanks of commission counsel for work  
16 well done. And I simply wanted to take the time  
17 to acknowledge the work of so many people that  
18 have gone into making this commission what I  
19 hope will be a success that will bring some  
20 reason and rationale to the issues that confront  
21 us. Thank you.

22 I think now we will adjourn the commission,  
23 Mr. McGowan, unless there's anything else that  
24 needs to be done.

25 MR. MCGOWAN: No, nothing further, Mr. Commissioner.

1 THE COMMISSIONER: All right. Thank you.

2 THE REGISTRAR: The hearings are now adjourned.

3 Thank you.

4 **(PROCEEDINGS ADJOURNED AT 12:46 P.M.)**

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