

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

COMMISSIONER AUSTIN F. CULLEN

INDEX OF PROCEEDINGS

Witness	Description	Page
	Proceedings commenced at 9:30 a.m.	1
	Closing submissions for Paul Jin by Mr. DelBigio	1
	Closing submissions for Kash Heed by Mr. Senkpiel	15
	Closing submissions for the British Columbia Civil Liberties Association by Ms. Magonet	55
	Proceedings adjourned at 11:03 a.m.	74
	Proceedings reconvened at 11:18 a.m.	74
	Closing submissions for the Canadian Bar Association BC Branch and the Criminal Defence Advocacy Society by Mr. Westell	75
	Closing submissions for the Transparency International Coalition by Mr. Rauch-Davis	94
	Discussion re reply submissions	118
	Reply for the British Columbia Lottery Corporation by Mr. Smart:	118
	Reply for the Attorney General of Canada by Mx. Wray	124
	Reply for the Province of British Columbia by Ms. Hughes	129
	Comments by the Commissioner	139
	Proceedings adjourned at 12:46 p.m.	143

INDEX OF EXHIBITS FOR IDENTIFICATION

Letter	Description	Page
---------------	--------------------	-------------

No exhibits for identification marked.

INDEX OF EXHIBITS

No.	Description	Page
------------	--------------------	-------------

No exhibits entered.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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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 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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