

**PROCEEDINGS AT HEARING
OF
JANUARY 13, 2021**

COMMISSIONER AUSTIN F. CULLEN

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January 13, 2021

(Via Videoconference)

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

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

THE COMMISSIONER: Yes. Thank you, Madam Registrar. Yes, Mr. McGowan.

MR. MCGOWAN: Yes, Mr. Commissioner. Today we have two witnesses testifying, Ms. Michele Wood-Tweel and Dr. José Hernandez, who are here on behalf of the Chartered Professional Accountants of Canada.

THE COMMISSIONER: Thank you.

MR. MCGOWAN: If the witnesses could be sworn, please.

THE REGISTRAR: Would each of you please state your full name and spell your first name and last name for the record. I'll start with Dr. Hernandez.

THE WITNESS: (JH) José Roberto Hernandez. It's J-o-s-é R-o-b-e-r-t-o H-e-r-n-a-n-d-e-z.

THE REGISTRAR: Thank you. And Ms. Wood-Tweel.

THE WITNESS: (MWT) Michele Alison Wood-Tweel. M-i-c-h-e-l-e A-l-i-s-o-n W-o-o-d - T-w-e-e-l.

1 University?

2 A (MWT) I do.

3 Q Which you were awarded that in 1983?

4 A Correct.

5 Q You became a chartered accountant in a 1985?

6 A (MWT) Yes.

7 Q And spent a good part of your career from 1983
8 to 2005 working at KPMG?

9 A (MWT) I did.

10 Q You provided the commission with a copy of your
11 CV?

12 A (MWT) Yes, I.

13 Q If we could display that please, Madam
14 Registrar.

15 This is your CV is being displayed now?

16 A (MWT) Yes, I can see it.

17 MR. MCGOWAN: Thank you. If that could be the next
18 exhibit please, Mr. Commissioner.

19 THE COMMISSIONER: Exhibit 404.

20 THE REGISTRAR: Exhibit 404.

21 **EXHIBIT 404: Curriculum Vitae of Michele**
22 **Wood-Tweel**

23 MR. MCGOWAN: Thank you.

24 Q Dr. Hernandez, you are a member of CPA Canada?

25 A (JH) I'm a member of the Institute of Chartered

1 Accountants of Ontario.

2 Q Of Ontario. And you have some involvement with
3 CPA Canada?

4 A (JH) Yes, I'm a volunteer with CPA Canada.

5 Q And you're presently based in Europe?

6 A (JH) Correct.

7 Q And with CPA Canada you were one of CPA Canada's
8 representatives at the Department of Finance's
9 public-private advisory committee on money
10 laundering and terrorist financing?

11 A (JH) That's correct.

12 Q And you're currently the CEO of Ortus
13 Strategies?

14 A (JH) Correct.

15 Q If you can just explain to the commissioner what
16 Ortus Strategies is.

17 A (JH) Ortus Strategies is a consulting business
18 established in 2008 with my former partner,
19 Louis Freeh. And the -- it's based out of
20 Zurich and then our focus is on white collar
21 crime, advising global corporations to address
22 issues once a scandal has erupted particularly
23 related to the United States Securities and
24 Exchange Commission or the Department of
25 Justice, so issues including fraud, corruption

1 and -- but the focus is on board advisory and
2 remediation.

3 Q Okay. Thank you. You hold a bachelors degree
4 of mathematics from the University of Waterloo?

5 A (JH) That's correct.

6 Q A masters in accounting also from the University
7 of Waterloo?

8 A (JH) Correct.

9 Q And you completed your PhD in economics and
10 business administration in 2007 at VU University
11 in Amsterdam?

12 A (JH) That's correct.

13 Q Where you continue to serve as guest faculty in
14 the school of business and economics?

15 A (JH) That's correct.

16 Q You provided the commission with a copy of your
17 curriculum vitae.

18 MR. MCGOWAN: Madam Registrar, if we could display
19 that, please. Now on the screen.

20 Mr. Commissioner, I wonder if that could be
21 the next exhibit, please.

22 THE COMMISSIONER: Exhibit 405.

23 THE REGISTRAR: Exhibit 405.

24 **EXHIBIT 405: Curriculum Vitae of José Hernandez**

25 MR. MCGOWAN: Thank you. We can put the that down

1 now.

2 I'm going to spend a few minutes,
3 Mr. Commissioner, reviewing the background and
4 structure of the organization these two
5 witnesses represent.

6 Q And, Ms. Wood-Tweel, I'll direct my questions
7 initially to you, though, Dr. Hernandez, if you
8 have anything to add, please don't be shy about
9 jumping in.

10 A (JH) Thank you.

11 Q Ms. Wood-Tweel, I wonder if you'd just take a
12 few moments and explain to the commissioner what
13 CPA Canada is and perhaps discuss with him the
14 mandate and role and membership of your
15 organization.

16 A (MWT) Thank you. CPA Canada is the national
17 organization of the chartered professional
18 accountant profession in Canada. And as such it
19 does represent the profession nationally and
20 often times that interprets into federally with
21 respect to the way Canada is structured
22 vis-à-vis the federal government and the
23 provincial governments and we also represent the
24 CPA profession internationally in support of
25 things like international standard setting as it

1 relates to the accounting profession and also as
2 a member of the International Federation of
3 Accountants.

4 Q Thank you. How many members does the
5 organization have?

6 A Approximately 220,000.

7 Q And is membership in CPA Canada mandatory for
8 those who are members of the provincial
9 organizations or who are regulated provincially?

10 A (MWT) Right. Yes, it is. So the individuals
11 who are members of the provincial bodies of the
12 CPA profession are also members of CPA Canada.
13 CPA Canada is one of those creatures under
14 non-profit statutes that has members as well and
15 the members are the provincial bodies
16 themselves.

17 Q Okay. Thank you. And does CPA Canada have any
18 governance or oversight role with respect to the
19 provincial bodies?

20 A (MWT) No, not governance and oversight. The
21 relationship between CPA Canada and the
22 provinces is one of collaboration. The
23 provinces fulfill a unique role vis-à-vis the
24 CPA profession in that they are statutorily
25 constructed in their relevant jurisdiction and

1 they are the regulating bodies of the CPA
2 profession. Not to say that CPA Canada and the
3 provinces don't work together because they do.
4 There are many ways in which the profession
5 enables itself to do what it does through the
6 power and the abilities of both CPA Canada and
7 provinces working collaboratively.

8 Q Thank you. In order to be a member of your
9 organization does an accountant have to belong
10 to the provincial organization?

11 A (MWT) Yes.

12 Q And I gather one of the roles that CPA Canada
13 fulfills is providing guidance to provincial
14 regulators.

15 A (MWT) Not so much guidance to provincial
16 regulators. Guidance in relation to matters of
17 interest to the profession, I would say more so.
18 So, for example, we provide research and
19 guidance in relation to accounting standards, in
20 relation to auditing standards, in relation to
21 business issues that impact upon the profession.
22 So it's not so much guidance to the provincial
23 bodies because the provincial bodies in their
24 own right have their own authority to do what
25 they're doing.

1 Q Okay. Thank you. Do you develop model rules or
2 model bylaws or model codes of conduct for
3 consideration by the provincial organizations?

4 A (MWT) Right. So one of the things that CPA
5 Canada does is it supports a lot of the work
6 that the profession does in its entirety. One
7 of the ways in which we do that is by supporting
8 the development of a harmonized code for the
9 profession, and the provinces all work together
10 in developing that code. And then as they
11 depart to go home to their relative or
12 respective jurisdictions, they have an idea of
13 what the harmonize code represents and then they
14 look to deploy that in their own provinces.

15 The legislation in each province in Canada
16 is unique in some way and it differs according
17 province to province how unique it is. But then
18 the code that is built as the harmonized code
19 has to fit within the regulatory and legislative
20 landscape of the respective province. So it may
21 be changed somewhat to fit into the provinces'
22 respective framework, but not by large degrees
23 because the code is relatively the same across
24 the country.

25 Q Do any sections of the harmonized code or are

1 any of them aimed at promoting AML compliance or
2 reducing the chance that an accountant might be
3 used to facilitate money laundering?

4 A (MWT) Yes, I think it would be fair to say that.
5 So the code is -- the Canadian CPA code is, it's
6 fair to say, a mixture of both principles and
7 rules. And the principles that you see in the
8 code that would relate to this, things like
9 integrity and things that attract to
10 professional behaviour, are all very relevant in
11 maintaining the reputation of the profession,
12 putting the public interest ahead of one's
13 own, et cetera. Those are all principles that
14 the code is built on. But then there are also
15 specific rules that speak to the fact that you
16 cannot associate with what you know not to be
17 true or that you should know not to be true.
18 You can't be associated with illegal activities,
19 et cetera. There are a number of provisions
20 within the code that would speak to those types
21 of items.

22 Q Okay. I gather from some information you
23 provided to the commission that CPA Canada
24 spends some significant effort in engaging in
25 issues related to money laundering as it relates

1 to the accounting profession?

2 A (MWT) That would be correct.

3 Q You've prepared for us a background report

4 titled "Background Report on CPA Canada

5 Anti-Money Laundering Activities"?

6 A (MWT) Yes.

7 Q And were you involved in constructing that

8 report?

9 A (MWT) Yes.

10 Q And that report sets out, among other things,

11 anti-money laundering activities and engagement

12 that the organization engages in and it attaches

13 a number of submissions and publications created

14 by the organization; is that fair?

15 A (MWT) Yes, that's correct.

16 Q It's quite an extensive document and sets out

17 and attaches a number of materials, and rather

18 than walking you through each of them I think it

19 would be useful if we could put that in the

20 record before the Commissioner.

21 MR. MCGOWAN: So, Madam Registrar, I'm going to ask

22 that you please display the front page of

23 CPAC00000267. Yes.

24 Q That's the report we've been discussing?

25 A (MWT) Yes.

1 MR. MCGOWAN: Mr. Commissioner, I wonder if that
2 could be the next exhibit, please.

3 THE COMMISSIONER: Very well.

4 MR. MCGOWAN: The report along with its appendices,
5 some of which we will discuss.

6 THE COMMISSIONER: All right. Thank you.
7 Exhibit 406.

8 THE REGISTRAR: Exhibit 406.

9 **EXHIBIT 406: CPAC Background Report on CPA**
10 **Canada's AML Activities**

11 MR. MCGOWAN:

12 Q I wonder if just in summary fashion,
13 Ms. Wood-Tweel, you might take a few moments and
14 discuss in summary fashion the engagement on AML
15 issues that CPA Canada is involved in.

16 A (MWT) Yes. There are several ways. In terms of
17 the Canadian federal government we have been
18 very active with respect to being participants
19 at both the advisory committee on money
20 laundering and terrorist financing advising
21 finance. I've also been a member of a
22 subcommittee of that committee itself and that
23 is on the legislation and regulation associated
24 with the *PCMLTFA* and as well there is another
25 subcommittee on guidance and policy

1 interpretation working group which is a
2 committee that is co-chaired -- or sorry,
3 chaired by FINTRAC which is with respect to all
4 of the pieces of guidance and policy
5 interpretation that FINTRAC issues with respect
6 to the regime.

7 Q Thank you. CPA Canada is a member of the
8 International Federation of Accountants?

9 A (ET) Yes.

10 Q I wonder if you could just explain briefly to
11 the Commissioner what that organization is.

12 A (MWT) Yes. So the accounting profession is
13 truly global in many different respects and one
14 of which is obviously the work that we do being
15 global in nature. But in addition to that, IFAC
16 or the International Federation of Accountants,
17 brings together the global profession to look at
18 the issues associated with the profession and it
19 also supports the independent standard-setting
20 boards that establish the accounting standards
21 and the audit and assurance standards and
22 ethical standards that evolve internationally.

23 And then similarly to the story I told about
24 how we develop something in Canada and take it
25 home to the provinces, we do a very similar

1 thing internationally whereby we look at
2 international standards and then we try to
3 harmonize to those as best as we can in our
4 respective jurisdictions around the world. And
5 in that way you end up with compatibility of
6 both requirements and standards around the globe
7 to the extent that those countries have in
8 particular either reconciled to them or adopted
9 them.

10 Q Okay. And does IFAC provide guidance or
11 standards that specifically relate to AML?

12 A (MWT) I think they would speak in the same way
13 that Canada's profession does through the code
14 of ethics, the international code of ethics
15 developed by the International Ethics Standards
16 Board of Accountants and as well in relation to
17 audit and assurance standards.

18 Q Thank you. And CPA Canada is also involved in
19 the international ethics standards board for
20 accountants?

21 A (MWT) Yes. As the member of IFAC and as well as
22 playing a supporting role to the provincial
23 bodies in Canada, we participate in the
24 International Ethics Standards Board of
25 Accountants as the national standards setter for

1 Canada, and that's with the chair of the public
2 trust committee and myself representing CPA
3 Canada. We attend the meetings of the
4 international ethics board and participate as
5 national standard setters because the provincial
6 bodies are the ethical standard setters for the
7 provincial bodies in Canada.

8 Q Thank you. And is that board associated to
9 IFAC?

10 A (MWT) It's supported by IFAC. It is an
11 independent standard-setting board and it has
12 independent oversight and it is structured
13 independently but has support.

14 Q And I understand that CPA Canada in conjunction
15 with that board recently authored an
16 international alert for professional accountants
17 regarding COVID-19 and involving risks of money
18 laundering -- risks for money laundering.

19 A (MWT) Yes.

20 Q I wonder if you could take a moment and explain
21 to the Commissioner the observed or assessed
22 impact of COVID-19 on money laundering risks.
23 And, Dr. Hernandez, I don't know if you or.

24 Ms. Wood-Tweel are better placed to respond
25 to that question, so I'll let you two sort it

1 out, I guess.

2 A (MWT) I can maybe start and then José, I'm sure,
3 will jump in.

4 The COVID-19 working group was established
5 by the international ethics standards board in
6 light of obviously the pandemic and the identity
7 of the fact that there were probably going to be
8 issues that would face accountants that could be
9 ethical in nature simply as a result of the new
10 issues associated with the pandemic. And Canada
11 was invited to participate in that small working
12 group with other countries like South Africa,
13 the UK, Australia. And we put our minds
14 together to come up with a list of issues that
15 we thought were relevant during COVID-19.

16 And the submission that I made was that
17 anti-money laundering and cyber security threats
18 were going to increase in the period of the
19 pandemic. And with that was given the authority
20 to start to develop the types of issues that
21 might go into an alert to the international
22 accounting profession in regard to those issues.

23 So the research that I did certainly looked
24 at places like Interpol, it looked at FATF, it
25 looked at cyber security, intelligence houses

1 around the world to see what they were saying.
2 And there were very basic to very sophisticated
3 issues associated with the pandemic that were
4 starting to arise with respect to an increase in
5 evolving risks regarding money laundering. It
6 was as simple as closed borders during the
7 pandemic meant that people who are cash mules in
8 the system could not go across borders taking
9 cash from one country to another. So it became
10 evident that there were going to be challenges
11 associated with the regimes in terms of managing
12 what was taking place. They were go to have to
13 be nimble as well as intelligence and also law
14 enforcement with respect to the evolving risks.

15 (JH) And, Mr. McGowan, if I may add. I
16 mean, in practice, you know, corporations have
17 established programs, policies, procedures and
18 now most of this has to be done from a bedroom
19 or an office. So in terms of effectiveness,
20 organizations have to relook at a lot -- a
21 number of their procedures, protocols and
22 reinvent a better way to do business when in
23 fact face-to-face interaction is effectively
24 eliminated.

25 So it's very, very complex. It goes beyond

1 anti-money laundering. It's just a broader
2 theme of control, governance and compliance, and
3 everyone is struggling. And of course that
4 creates opportunities but also threats because
5 you cannot identify your clients, you cannot
6 identify your third parties as effectively as
7 you were able to do a year ago.

8 MR. MCGOWAN: Thank you. And, Mr. Commissioner, for
9 the benefit of the record, the paper that we've
10 been discussing is Appendix GG to the background
11 report that was filed.

12 THE COMMISSIONER: Thank you.

13 MR. MCGOWAN:

14 Q Now, I understand that CPA Canada has also
15 collaborated with the ethics board on the issue
16 of beneficial ownership transparency?

17 A (MWT) Yes. With IFAC, actually.

18 Q I gather that's an issue that's of some
19 importance to CPA Canada; is that a fair
20 understanding?

21 A (MWT) Yes, it is. In part because of the
22 obvious movement with respect to beneficial
23 ownership in Canada, both in terms of the
24 creation of requirements for beneficial
25 ownership registers within the provinces and

1 also the consideration of whether we will
2 develop in Canada a public registry of
3 beneficial ownership.

4 Q When you speak of beneficial ownership, are you
5 speaking of beneficial ownership in relation to
6 property or corporations, or is it something
7 else?

8 A (MWT) This is -- where I have focused my
9 attention has been on the private corporate
10 space. What was clear to me was from looking at
11 some of the countries around the world where
12 there were initiatives being undertaken, the one
13 that caught my eye clearly a couple of years ago
14 was the Companies House in the UK. And for
15 reasons unrelated to where Canada is today I
16 started studying that regime to understand it
17 more because it seemed be to a bold initiative
18 and I wanted to understand how it itself played
19 into the realm of anti-money laundering.

20 Q Okay.

21 A (JH) Mr. McGowan, if I could just add to that.
22 If you look at the enforcement trends around
23 corruption and the major scandal, three quarters
24 of these tend to involve third parties. So that
25 means that corporations are effectively caught

1 outsourcing their dirty work, dirty laundry to a
2 third party to do that on their behalf. For me
3 beneficial owner is so fundamental in the sense
4 that we need to get -- and this is why CPA
5 Canada is so adamant about this. We need to get
6 to a better standard of doing business. And to
7 do that we need to have the right tools and the
8 right information for organizations not to get
9 involved with parties that they shouldn't,
10 whether it's because of the sanction list,
11 whether they're PEP or because beneficial
12 ownership is unknown.

13 So, again, it's more about raising the
14 standard of doing business, raising the
15 awareness, raising the profile of business
16 particularly in Canada rather than just the fact
17 of having a reservoir or register that just sits
18 there to get updated and adds bureaucracy and
19 burden. But it is a tool, a very, very powerful
20 and effective tool that if you look at the
21 United States, they're on their way to
22 developing one. If you look at Europe, there's
23 a big push to -- they have developed them, but
24 they want to improve them. And then the
25 question about it is how much transparency do

1 you provide in the public domain.

2 Q Okay. Do you have any specific recommendations
3 with respect to how the British Columbia regime
4 could be improved?

5 A (JH) It's on the right track. I mean, we've
6 started with the legislation. The test is on --
7 is it going to -- it's got to remain updated.
8 You know, is it going to be reliable and can it
9 be used on the one hand, and on the other hand
10 it is -- in terms of the burden on business and
11 burden on particularly small and medium-sized
12 businesses.

13 So I think it's -- you look at it like the
14 first major steps have been taken, and the test
15 is is it going to be effective.

16 Q Okay. Do you have any thoughts on the
17 importance of verifying the information
18 contained in the registry?

19 A (JH) I mean, if you're looking at out-of-date
20 information, you know, then it's pretty useless
21 from a standard of doing business. And, again,
22 I look at it from the point of view if I want to
23 know whether I should do business with a
24 particular third party and I want to access
25 information and that information pertains to a

1 prior owner or a prior shareholder, it's pretty
2 useless to me looking back. So for me it has to
3 be reliable. It has to be reliable today. And
4 of course it cannot be, you know, current as of
5 a particular day, but if it's ten years old, the
6 information, then it's pretty irrelevant.

7 Q Okay. And CPA Canada has co-authored a report
8 with IFAC titled "Approaches to Beneficial
9 Ownership Transparency: The Global Framework
10 and Views From the Accountancy Profession"?

11 A (MWT) That's correct.

12 MR. MCGOWAN: Okay. And that, Mr. Commissioner, is
13 exhibit FF to the background report.

14 Q Ms. Wood-Tweel, does that paper still reflect
15 CPA Canada's current views on the issue?

16 A (MWT) Well, it was a research paper that we put
17 together to try and inform policy discussions
18 that we knew were going on throughout the world.
19 I think CPA Canada's position with respect to
20 the Canadian perspective that we were asked to
21 participate in consultation on is our response
22 to the federal government regarding the
23 proposals that were aired in Canada.

24 The other point that I would just like to
25 make further to the discussion you had with

1 Mr. Hernandez, we noticed as well with the UK
2 with respect to the Companies House registry
3 that when they did their reflection and their
4 evaluation of the Companies House register, I
5 think one of the things they've concluded is
6 that verification is very important. And that
7 starts to show up when individuals who -- or
8 entities that are intended to utilize the
9 registry for purposes of complying with the
10 regime can't rely on it because frankly the
11 information hasn't been verified and isn't
12 reliable.

13 Q Okay. Thank you. Dr. Hernandez, you served as
14 CPA Canada's representative on the
15 public-private advisory committee on money
16 laundering and terrorist financing?

17 A (JH) that's correct.

18 Q I wonder you could just explain to the
19 Commissioner what that organization is.

20 A (JH) It was an organization put together
21 involving bringing government finance Canada and
22 bringing industry, various participants
23 together. We meet twice a year. And the --
24 it's a discussion fora in order to address
25 issues, in order to, you know, work on how to

1 effectively improve the regime. So it's a
2 two-way conversation that occurs. It meets
3 twice a year in Ottawa, generally -- and of
4 course not now with COVID times -- about three
5 hours. And it's a broad stakeholder group
6 involving, you know, members of finance Canada
7 and FINTRAC and other regulatory bodies actually
8 sit at the table.

9 Q Okay. And during those meetings, are you as CPA
10 Canada's representative provided feedback on the
11 level of compliance or understanding of your
12 membership as it relates to AML obligations?

13 A (JH) No. It's meant to address broader subjects
14 that are affecting the whole. You know, best
15 practices. For example, private-public
16 partnerships, how they're working, how they're
17 effective. Issues that are affecting the
18 regime, like cryptocurrencies. And it's meant
19 to be a dialogue rather than a discussion on a
20 particular member.

21 Q Okay. Thank you. We've heard some evidence
22 about Canada's AML regime as it relates to
23 accountants, and I gather there are many
24 certified professional accountants performing a
25 wide variety of accounting function but that a

1 relatively narrow subset of those individuals
2 and activities are actually caught by reporting
3 requirements. Is that a fair understanding?

4 A (MWT) It's a fair understanding in that the
5 profession itself has as I mentioned
6 approximately 220,000 members. Of those members
7 approximately 80 percent are doing something
8 other than public practice. So 20 percent of
9 our membership is active in public practice.
10 And then in relation to Canada's regime it's a
11 question of whether or not the activities that
12 they undertake are actually what are considered
13 to be triggering activities in accordance with
14 the legislation and regulations.

15 Q I wonder if you could briefly describe for the
16 Commissioner the circumstances in which
17 obligations arise under the *PCMLTFA* and
18 regulations for accountants to report.

19 A (MWT) Yes. So accountants and accounting firms,
20 and there are definitions associated with these,
21 but for general purposes I will say it's
22 designated accountants in Canada. Chartered
23 professional accountants are the accountants
24 spoken to in the legislation and regulations
25 currently. And what it speaks to is that if you

1 are entering into what are called triggering
2 activities -- and this is where you become a
3 financial intermediary into the financial
4 system, you are actually transacting in a way
5 that you were having an impact on the financial
6 system -- you will have responsibilities under
7 the regime. So that could be the buying and
8 selling of securities, it could be the buying
9 and selling of real estate as an example. It
10 could be the receipt or payment of cash on
11 behalf of a client or a person, another entity.

12 Q Okay. So providing advice, are there
13 circumstances where there's not a transaction
14 actually conducted by the accountant but he or
15 she is in the position of providing advice?
16 Would that ever be caught by the legislation?

17 A (MWT) No, the intent of the legislation is, as I
18 mentioned, to focus on -- and it's been sculpted
19 that way in my opinion both by way of my
20 research and also my thinking on the subject.
21 It's been sculpted in a way to look at the risk
22 posed by the involvement of an accountant in a
23 transaction that actually interfaces with the
24 financial system, and the provision of advice
25 doesn't. However, clearly what has been made

1 clear is that if you are providing instructions
2 and you are directing, then that is the same
3 thing as being actually involved in the direct
4 transaction.

5 So there's a differentiation being made
6 between advice and between instructions.

7 Q Okay. Thank you. Would the maintaining of
8 books for a corporation or an organization ever
9 be caught by the legislation in terms of a
10 reporting requirement?

11 A (MWT) I would suggest no. The keeping of books
12 is basically -- I say this with respect -- a
13 paper process. So it is not the movement of
14 assets and it is not the movement of money. It
15 is the recording of transactions on paper and is
16 not anything that ends up leading to a financial
17 transaction itself with the financial system.

18 Q But I gather the maintaining of books might give
19 an accountant a lens into activity such that
20 they might be in a position to observe
21 suspicious activity. Is that a fair
22 understanding?

23 A (MWT) Well, I think -- from my perspective I
24 think this is where it becomes relevant that we
25 have to realize that the *PCMLTFA* -- and this is

1 again in my opinion from my research and my
2 studying and from my thinking about it -- does
3 not stand alone in Canada's legal
4 infrastructure. So it's one act and there are a
5 variety of other acts that are alongside it. So
6 whether it's the *Customs Act*, whether it's
7 excise, whether it's the *Income Tax Act*, whether
8 it's the *Bankruptcy and Insolvency Act*. There
9 are a myriad of acts that relate to the question
10 that you're asking. So it could be that a
11 person would be working on something and see
12 something. It's not to say that the *PCMLTFA* is
13 the only act that speaks to the issue. A very
14 good example obviously relates to tax.

15 Q Yes.

16 A (JH) And, Mr. McGowan, if I could just add, you
17 know, many of the organizations that I'm working
18 with, for example, will have a shared service
19 centre in Spain, transaction processing out of
20 Manila, a treasury based out of South America
21 and the actual recording of sales and expenses
22 are being done in different hemispheres. So in
23 terms of actually that sort of view, nostalgic
24 view of an accountant actually booking the
25 revenues and the expenses, that's -- you know,

1 it's true for my father's business and so on,
2 but it's not really true for most corporations.
3 You have a lot of technology that has enabled
4 compartmentalization but also efficiency.

5 And then going back to Michele, a lot of it
6 has been automated around the world with great
7 technology.

8 Q Am I correct that there are rules of
9 confidentiality that limit the ability of an
10 accountant to ethically disclose information
11 about their clients?

12 A (MWT) The rule of confidentiality certainly
13 exists. And it exists in relation to your
14 current clients and former clients or current
15 employer and a former employer. Obviously the
16 understanding between a chartered professional
17 accountant is that if information it being
18 disclosed to them that it's being disclosed in
19 confidence. And in part that relates to the
20 fact of receiving full disclosure and
21 information from a client in order for us to be
22 able to do our work.

23 Many times we cannot successfully do our
24 work unless information is fully disclosed to us
25 and most often people are not prepared to do

1 that unless they have confidentiality. However,
2 the provisions of confidentiality in the CPA
3 code and across the provinces provide for some
4 ways in which there are exceptions, one of which
5 is if there's legal authority with respect to
6 disclosure, or another example is if your client
7 actually provides consent to the disclosure of
8 information.

9 THE COMMISSIONER: Could I interrupt just for a
10 second. You said legal authority. Did you mean
11 legal obligation, or did I misunderstand?

12 THE WITNESS: (MWT) Well, I think the word is
13 legal -- if there's legal authority meaning that
14 there's something that compels, and I think that
15 it can come in different forms and different
16 pieces of legislation in different ways. The
17 *PCMLTFA* is clearly one of them. It creates a
18 requirement and that allows for reporting by
19 accountants as reporting entities under the
20 regime.

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

23 MR. MCGOWAN: Thank you, Mr. Commissioner.

24 Q If, for example, a chartered professional
25 accountant in the course of assisting a client

1 observes suspicious circumstances such as a
2 client living well beyond their reported income
3 but the transactions that the accountant was
4 involved in were not caught in such a way that
5 they -- that there was any mandated reporting,
6 would the accountant be at liberty in the
7 context of the ethical obligations he or she
8 would be under to disclose that to law
9 enforcement or somebody else?

10 A (MWT) There's -- the answer to this is layers of
11 information. So I apologize that I can't make
12 it short and sweet. The first thing that an
13 individual in working with someone where you
14 find a situation that doesn't for whatever
15 reason appear to be appropriate is obviously to
16 try and deal with that person or that entity in
17 terms of trying to find a way to remediate or
18 correct the issue.

19 If it's not possible to get the issue
20 remediated or corrected, and that includes
21 telling people as clients that they may be
22 actually running afoul of laws or that they may
23 actually already be afoul of a law and they need
24 to correct, it would be certainly normal course
25 that you would not be able to associate with

1 that client in the future because our rules
2 won't allow it. So you can't participate in the
3 illegal activity that may further take place
4 from the point at which you may have picked it
5 up, and you can't be associated with it. So
6 those are some of the examples of things that
7 could occur.

8 There are other things that can occur. If
9 you were to be faced with a serious situation,
10 it might be that you would need to undertake
11 legal advice to determine the best steps that
12 you might need to take. Obviously understanding
13 if there are requirements to report the
14 information somewhere, you'd need to know that.
15 If you are then looking further to say there's
16 nowhere that I'm required to report, I have
17 confidentiality, the accountant will basically
18 face some important decisions and they've got
19 important decisions associated with
20 confidentiality. They've got important
21 decisions relative to the public interest in
22 which the code is based and they are also
23 looking at an individual that came to them for
24 services. So there's going to be some decision
25 making and I am fairly confident based on

1 experience of the profession that it would
2 happen with legal advice in term of the next
3 steps.

4 Q Okay.

5 A (JH) Mr. McGowan, if I could interject and just
6 add to this. This is one of the reasons why
7 we've been advocating, at least since 2017
8 personally and CPA Canada, we need an effective
9 whistleblower regime in Canada. One where you
10 don't have a transaction on hand, but you have
11 suspicions, and the question is where do you go.
12 Not only where do you go to provide information,
13 but also to prevent -- you know, so that law
14 enforcement and prosecutors, regulators can look
15 at that and actually undertake an investigation
16 in due course, but secondly how to protect
17 individuals who do that, who take that leap of
18 faith to report and potentially breach of
19 confidentiality is required, but also have a
20 process to bring that issue to closure, you
21 know. For the sake of safeguarding the system
22 in Canada and, you know, again, as an individual
23 trying to exercises his or her responsibility,
24 you do need effective channels and effective
25 mechanisms to do that.

1 Q Thank you. Am I correct that -- Dr. Hernandez,
2 that as things stand today in many circumstances
3 if there's not an obligation, a statutory or
4 other obligation to report, in many cases the
5 accountant would be bound by confidentiality to
6 hold the information secret?

7 A (JH) That is my understanding, and worse than
8 that, you know, by breaching confidentiality
9 your employer can, you know, seek damages
10 against you and seek, you know some type of
11 restitution, and you end up in a web of
12 complexity trying to do the right thing and
13 ending not only without a job, with a bad
14 reputation and not employable for the
15 foreseeable future.

16 MR. MCGOWAN: Thank you. Madam Registrar, I note
17 that the background report is still displayed.
18 We don't need that any longer.

19 Q Aside from the legislative requirements under
20 the legislation we've been discussing, does CPA
21 Canada or do the provinces typically --
22 provincial regulators, pardon me, typically have
23 any know-your-client rules or obligations placed
24 on accountants?

25 A (MWT) Speaking for that, if not otherwise

1 required, for example, as in reporting entities
2 under the *PCMLTFA*, I think that the code speaks
3 to it in that you have to know who you're doing
4 business with in order to uphold the reputation
5 of the profession, in order to ensure that
6 you're not being becoming associated with
7 illegal activities or one unsavoury characters.
8 So yes, I think in the realm of accepting a
9 client you are bound by our code to ensure that
10 you're working with people that you know and
11 understand are who they say they are.

12 Now, that transcends into business purposes,
13 obviously. And when you look at the profession,
14 you can find immense business processes in the
15 profession with respect to clients. Some of it
16 is driven out of the need to know in order to be
17 able to do our craft. So in other words, if
18 you're going to work with somebody with respect
19 to tax, you can't work knowing part of their tax
20 picture, you have to know their entire tax
21 picture because the Canadian tax laws will
22 require you to understand things like associated
23 corporations. So you can't have half the
24 picture; you have to have all the picture.

25 That's just one small example of the types

1 of work that we do and why we have to know our
2 clients well in order to be able to do our work.

3 Q Okay. Thank you. Does CPA Canada gather
4 statistics on the percentage of accountants that
5 engage in triggering activities?

6 A (MWT) No.

7 Q Is there a limit on the quantity of cash an
8 accountant can accept either for fees or to fund
9 a transaction?

10 A (MWT) Not that I am aware of.

11 Q Does CPA Canada have a view and whether there
12 should be such a limit?

13 A (MWT) Well, I think, again, I look at the issue
14 and I look to my experience in terms of the
15 profession. I think that what we have is we
16 have a code that speaks to the principles that
17 right off the bat, if you are accepting any form
18 of payment, cash, cryptocurrency, you name it,
19 virtual currency, anything that is anything
20 other than bona fide, you are already having
21 problems with the code because the code is
22 saying you shouldn't be doing it. So the
23 principles of the code remain true. It's the
24 foundation of the profession, and we have it.

25 If we were to look towards something that is

1 more pointed as a rule, that certainly could be
2 introduced. It's not to say that the principles
3 of the code are not applying. They are. It's
4 just that you may choose to move to a pointed
5 rule with respect to cash.

6 Now, my own experience, and these are my own
7 and that's what I can relate to you as opposed
8 to surveys and such, is the fact that the
9 majority of the work that the profession does in
10 the realm of public practice does not actually
11 relate to specific assets and does not actually
12 relate to the specific management of assets.

13 Now, there are parts of the profession that
14 that's an every day core business. Insolvency
15 and bankruptcy is one of those areas of the
16 profession where it is routine. But for much of
17 what we consider to be public practice, that is
18 not something that is sort of a core process of
19 what the profession's work it is in Canada.

20 Q You speak to the code in the context of receipt
21 of cash or dealing with assets. Is there a
22 section of the code that specifically requires
23 an accountant to determine the source of funds
24 they are receiving or the source of cash they
25 are receiving?

1 A (MWT) No. And I think Mr. McGuire in his report
2 had identified that in the IESBA code, the
3 international code, there is a feature within
4 the rule that we have also around handling the
5 property of others where you determine source of
6 funds in the international code. We currently
7 have a mapping project that is underway simply
8 because the international code has really been
9 changed significantly in the last couple
10 of years through a major restructuring and
11 revision. So the mapping exercise is literally
12 a process of comparing provision by provision in
13 Canada versus the international code and looking
14 at where the differences lie. That particular
15 difference of course came up on our review and
16 is under consideration.

17 Q Okay. Thank you. One of the things that CPA
18 Canada has done to promote compliance with AML
19 reporting obligations and an understanding of
20 those obligations was to compile a guide to
21 comply with Canada's anti-money laundering AML
22 legislation; is that correct?

23 A (MWT) That's correct.

24 MR. MCGOWAN: Madam Registrar, that --

25 Q And that guide was created in the context of --

1 perhaps by CPA Canada's anti-money laundering
2 and terrorist financing committee in 2014; is
3 that right?

4 A (MWT) The version that you're referring to, yes.
5 What I would like to say is that prior versions
6 of a guide much like that existed before then.
7 So there was, for example, the 2008 version that
8 you received from CPABC in one of their
9 submissions. This guide goes all the way back
10 to 2002 and it was put together by legacy
11 professional bodies before unification to assist
12 the members with their reporting
13 responsibilities under the act.

14 Q And was the 2014 version a fairly significant
15 expansion and update?

16 A (MWT) It was an update in relation to the
17 changes that had occurred.

18 Q Okay. I'd like to ask you a little bit about
19 CPA Canada's anti-money laundering and terrorist
20 financing committee. That was created in 2014;
21 is that correct?

22 A That's correct under my understanding. I was
23 not a participant, but that is what I
24 understand. And there seems to be some dates of
25 '13, '14 -- around '14.

1 Q Okay. Do you know if the creation of this
2 committee was prompted by any particular concern
3 or specific criticism that had been levied
4 against the profession?

5 A (MWT) No. In fact my understanding of that
6 would be is that, again -- and this is
7 significant in terms of the context of the
8 situation -- the unification of the profession
9 occurred at a different point in time in every
10 province right across the country. When we
11 brought three professions together there were
12 slightly different timelines as to when that
13 occurred.

14 In the legacy world of the professions,
15 there were AML committees existing. They had
16 already been working on this. So, for example,
17 if you look at the preface in the 2008 AML
18 guide, you will see it paying homage to the 2002
19 guide and the committee that actually wrote it
20 or that contributed to it. So I think it's
21 clear to see that the efforts of the legacy body
22 that I belong to at the time -- at the moment, I
23 guess, back in time was involved in this space
24 as early as 1999. And that's prior to the
25 legislation, which frankly tells me that, not

1 surprisingly, we were probably being involved in
2 consultations with the federal government around
3 the introduction of *PCMLTFA*.

4 So from there there were committees. And I
5 don't think it was in direct response to
6 concerns or issues. It was the fact that this
7 was a new area, a new dimension of Canadian
8 responsibility and law, and we needed to
9 understand it and we needed to work towards it.
10 So that's how the committee process was born.
11 The committee that you're looking at with
12 respect to 2014 and the guide was actually the
13 first committee of CPA Canada being the new
14 unified national body of the profession.

15 Q Okay. Thank you. And with the creation of this
16 body came the drafting of some terms of
17 reference?

18 A (MWT) Yes.

19 MR. MCGOWAN: Madam Registrar, I wonder if you could
20 please pull up the terms of reference. They're
21 CPAC50.

22 Q Those are the terms of reference that are being
23 displayed on the screen?

24 A (MWT) Yes.

25 MR. MCGOWAN: If those could be the next exhibit,

1 please, Mr. Commissioner.

2 THE COMMISSIONER: Yes. Very well. I think we're at
3 407, are we, Madam Registrar?

4 THE REGISTRAR: Yes, exhibit 407.

5 **EXHIBIT 407: Anti-Money Laundering &**
6 **Anti-Terrorist Financing Committee of the**
7 **Chartered Professional Accountants of Canada -**
8 **Terms of Reference - February 2015**

9 MR. MCGOWAN: Thank you. And if we could just zoom
10 in on letter (e) under "Objectives" please.

11 Q One of the objectives, objective (e), was to:

12 "Assist CPA Canada with the development of
13 timely and relevant guidance and resources
14 that will assist CPAs and CPA firms in
15 understanding their obligations under the
16 AML/ATF legislation and improving their
17 level of compliance."

18 Was this objective borne out of a concern at the
19 time about the level of understanding and level
20 of compliance by CPAs and their firms?

21 A (MWT) So here is what I have to answer to that
22 question is that my knowledge of our files
23 associated with this committee show that the
24 terms of reference had several iterations. So I
25 can't confirm for you unfortunately whether

1 paragraph (e) was there from the very first
2 version of the terms of reference or not, but
3 the discussion around the terms of reference
4 continued on for quite some period of time and
5 was augmented and looked at and discussed by the
6 committee. So I'm unfortunately, because I
7 wasn't involved, unable to say if that was that
8 there at the first writing of the terms of
9 reference or if that's what it eventually
10 became.

11 Now, it could have become that way certainly
12 because in the committee's existence it became
13 aware of information from FINTRAC regarding
14 results associated with the level of compliance
15 of accountants and accounting firms, and that
16 might be certainly what this refers to in
17 relation to that time frame. But I can't say
18 whether it was there preceding that information
19 or not.

20 Q Okay. Thank you. We'll come to discuss some of
21 that information that was communicated by
22 FINTRAC. But before we do, I wonder if you
23 might just take a moment and generally explain
24 to the Commissioner what the -- what activities
25 that committee engaged in.

1 A (MWT) So from my perspective in having reviewed
2 the progress of the committee, the committee
3 convened a few times over a couple of years and
4 talked about the issue of AML relative to the
5 regime itself and also relative to the
6 profession. Part of their discussion was
7 certainly around creating awareness around the
8 requirements under the regime and how best to do
9 that. Certainly I know they talked about the
10 ability to have things like webinars. They
11 talked about the ability to have publications to
12 send out information to members, to ensure that
13 there was awareness or to create awareness if
14 there wasn't already. And then there was a
15 point in time as well within the committee's
16 history where it identified that there was
17 information suggesting that more needed to be
18 done, and they turned their focus to that.

19 Q All right. And the committee, I gather, liaised
20 with federal partners, including the
21 public-private sector advisory committee?

22 A (MWT) I actually can't say that. All I'm aware
23 of is the fact that the chair of the CPA Canada
24 AML committee, Matthew McGuire, who appeared
25 before the commission on Monday, was also an

1 individual on that committee, that committee
2 that used to exist with the federal government.

3 I think it's understandable that certainly
4 information that he was aware of from that
5 federal committee, to the extent that he was
6 able to share that with this committee and work
7 towards that purpose, I'm sure he was doing
8 that. And I think there is information within
9 the documents of the committee that reflect that
10 he was trying to do that.

11 Q Okay. CPA Canada's anti-money laundering/ATF
12 committee started in 2013/14. Are you able to
13 tell me -- let me ask you this. My
14 understanding is that it ceased to exist
15 sometime around 2016; is that correct?

16 A (MWT) Yes. And that was really -- as we were
17 refocusing our efforts with respect to the
18 federal government, the idea of the ACMLTF, the
19 Advisory Committee on Money Laundering Terrorist
20 Financing, was coming to the fore and there was
21 going to be a look at how we were going to
22 resource this particular area of work and the
23 need to go forward in a different way, including
24 more committees to be part of at the federal
25 level.

1 Q Okay. So it doesn't -- the disbanding of that
2 committee, I gather from what you've said,
3 doesn't reflect a lack of continued engagement
4 on the issue of AML; is that fair?

5 A (MWT) Certainly not. And if anything, if I
6 could say -- and I know my colleague, José, may
7 have something to say -- the timing of the
8 activity and the federal regime as we have
9 witnessed it came alive literally in 2016/2017.
10 A certain amount of that, I'm sure, was as
11 relates to the FATF review of Canada, and I
12 think that there were things that Canada as a
13 country had identified, there were things that
14 needed to be done better. And the federal
15 government, you know, was coming up with a plan
16 as to what that was going to be.

17 So from 2016 forward, José would've been
18 there at 2016 at one point. I came in in 2017.
19 It has been an extraordinary investment of time
20 and resources with respect to the regime and the
21 efforts of the public-private sector to work
22 towards it.

23 (JH) And if I may, Michele, Mr. McGowan,
24 with your permission.

25 Q Yes.

1 A (JH) I mean, in 2016 was the year where the
2 FATF review was coming online, so we had some
3 preliminary findings. That's the year I joined
4 I think in the spring. And my view was that
5 there were a lot of significant items in that
6 review of Canada, but the most pressing issues
7 that were obvious, it related to three areas.
8 You know, the lack of prosecution, meaning lack
9 of accountability in the regime; beneficial
10 ownership; and the third one was sort of lack of
11 whistle-blowing. And I put that hat on and
12 perhaps my experience with advising boards of
13 large companies in dealing with white collar
14 crime in general.

15 So what I took back to CPA Canada under the
16 leadership of CPA Canada, Julie Tomlinson and
17 others, I proposed to them that this is an area
18 not because accountants were an issue but
19 because accountants could enable -- better
20 business could enable many things to put certain
21 views together.

22 And so starting in 2017 we put things down
23 on paper and we persisted on a number of items
24 that we thought really address the core issues
25 that in our view could strengthen the regime in

1 Canada. So addressing the highest priority, the
2 highest risk areas rather than focusing on
3 technical requirements that may look good on
4 paper, you know, may turn into -- be burdensome
5 to business. And as you've seen from '17, '18,
6 '19 we've been very active under the leadership
7 of Michele, Heather and others at CPA Canada and
8 very committed and very engaged to get this
9 right, again, because of our public trust
10 mandate but also because we can be great
11 enablers in this process.

12 Q Thank you.

13 MR. MCGOWAN: Madam Registrar, I wonder if we could
14 display exhibit 393.

15 Q This is the guide to comply with Canada's
16 anti-money laundering legislation we've been
17 discussing? Ms. Wood-Tweel?

18 A (MWT) I think so. Yes, it's certainly the
19 guide. It's a question of which year it is, but
20 yes, it's definitely the guide.

21 MR. MCGOWAN: Can we flip forward two pages, please,
22 Madam Registrar.

23 A (MWT) That is the 2014 guide.

24 Q Thank you. And I was -- as I look through it, I
25 noted that including the forms and checklists

1 numbers in the top corner of the page. I'm
2 looking at 3.1.3.1 "Establishing Reasonable
3 Grounds For Suspicion." And I'll just read it
4 out.

5 "According to AML Legislation, Accountants
6 and Accounting Firms are required to
7 report to FINTRAC, using the prescribed
8 form, every financial transaction that
9 occurs or is attempted in the course of
10 Triggering Activities and in respect of
11 which there are reasonable grounds to
12 suspect that the transaction is related to
13 the commission or the attempted commission
14 of (a) a money laundering offence; or (b)
15 terrorist activity financing offence"

16 Now, that -- it sounds on my reading like a
17 fairly broad obligation, but I gather it's the
18 inclusion of the words "in the course of
19 triggering activities" that substantially limits
20 that reporting obligation. Is that a fair
21 understanding?

22 A (MWT) Yes.

23 Q If we could just flip forward, please, to
24 page 23. I'm looking at 3.1.3.3 at the bottom
25 of the page. Thank you.

1 "In its Guideline 2 in respect to
2 suspicious transaction reports, FINTRAC
3 provides a number of indicators about
4 which Accountants and Accounting Firms
5 should be vigilant. The presence of an
6 indicator is one factor which may lead to
7 the consideration of a suspicious
8 transaction report, but by itself is not
9 definitive."

10 MR. MCGOWAN: And if we could scroll down please,
11 Madam Registrar, to page 24.

12 Q And there are a number of factors listed such as
13 a client appearing to live beyond their means or
14 a client having cheques inconsistent with sales
15 or a company paying unusual consultation fees to
16 offshore companies and companies invoicing by
17 organizations located in the country that
18 doesn't have adequate money laundering laws.

19 Are these and the other factors listed the
20 types of indicators that you continue to train
21 your members to look for when assessing whether
22 a transaction is suspicious?

23 A (MWT) Well, I think the -- first of all a number
24 of these that you've just read out, I can't
25 speak to every one of them but you will find

1 these consistently around the globe. It's what
2 the UK talks to, it's what FATF talks to,
3 et cetera. So there's a consensus around the
4 types of things that an accountant might face
5 that might relate to a suspicious transaction or
6 depending on the jurisdiction a suspicious
7 activity report like the UK.

8 Relative to what we train for, we train for
9 many different things, and training includes
10 professional skepticism and a very high level of
11 professional skepticism. So, in other words, if
12 you are going to provide me with information
13 that on its face I believe does not resonate
14 with what makes sense, I have to probe further
15 to understand what is it. If you appear to be
16 living beyond your means, which from a financial
17 perspective we can actually figure out fairly
18 quickly in a lot of times if we have the right
19 information, again that's my signal to be
20 probing further.

21 So when you say do we train towards it, we
22 train towards it as the very essence actually of
23 being a chartered professional accountant
24 because part of what we do is bring a healthy
25 dose of professional skepticism to everything,

1 and it doesn't take, with respect, sentences
2 like these to tell us that there are things that
3 might be wrong that we need to ask questions
4 about or not associate with.

5 But these are helpful. They're prompts and
6 they're very helpful and globally, as I
7 mentioned, they are definitely in use around the
8 world.

9 Q Okay. And I gather the observation of these
10 factors in conjunction with other information
11 that gave rise to suspicion would only result in
12 an obligation to report if the professional
13 accountant was engaged in a triggering activity.

14 A (MWT) Right. Because, again, Canada's regime
15 has focused on suspicious transaction reporting
16 and it has focused on, with respect to
17 accountants, the intermediary-type
18 responsibility that arises in dealing with the
19 financial system, which again is not core
20 necessarily to the business that we do, which is
21 public accounting. It can happen, but it's not
22 as common as one might think by reading some of
23 the information.

24 Q As you know, Mr. McGuire testified before the
25 commission earlier this week, and he expressed

1 the view that the guide is now outdated and
2 needing of updating. Do you agree with that,
3 and can you give the Commissioner any insight
4 into whether any efforts to update the guide are
5 underway?

6 A (MWT) Yes, so there are a significant number of
7 regulations that will be become effective on
8 June 1st, 2021. Several of them actually apply
9 to CPAs. And as you may be aware, we had -- a
10 very large first package of regulations came in
11 2019, effective 2021. Some within it effective
12 earlier. And then a second package occurred in
13 early 2020 and was approved by the time of the
14 summer, as I recall it.

15 At that point we actually then hired our
16 writers with respect to the manuscript. The
17 manuscript is in draft. It will be reviewed, it
18 will be translated and it will be available to
19 the membership in the spring of 2021. And part
20 of what we're doing as well is working in
21 concert with the guidance information that is
22 coming from FINTRAC as FINTRAC is updating all
23 of the guides associated with the regime because
24 of these regulatory changes that I mentioned
25 have occurred in 2019 and 2020, effective 2021.

1 Q Thank you.

2 A (JH) And, Mr. McGowan, if I could add. Not just
3 at the guide level, but many steps beforehand we
4 were quite engaged to make sure there's clarity
5 on the rules to void undue complexity and to
6 ensure that these things will be effective
7 particularly in Michele's role, and whether it's
8 for the advisory committee on money laundering
9 on the regulation side but also in CPA Canada.
10 And that's been a theme for us. We do not want
11 to create undue complexity. We do want a much
12 more effective regime.

13 Q Thank you. We've heard evidence of a March 4th,
14 2015 meeting where FINTRAC presented to CPA
15 Canada and raised some concerns about the level
16 of awareness of obligations on the part of
17 accountants as well as the level of compliance
18 with AML reporting obligations. Are you
19 familiar with that meeting?

20 A (MWT) Yes, I am familiar by way of the minutes
21 that I have read. I was not a member at the
22 time of that committee, didn't participate. So
23 yes, I certainly am aware of what the committee
24 heard according to the minutes, yes.

25 Q Okay. Yes. And I gather that information --

1 significant focus of our efforts basically, like
2 I said, dating back to these other guides, these
3 other pieces of information that have gone out,
4 and I think that it's a concerted effort that is
5 required. The journey associated with this
6 regime and the responsibilities of those that
7 are within it, including us, is going to be long
8 haul in Canada. For sure. And I think we have
9 to execute on a number of different levels to
10 ensure that we do have awareness.

11 Q Thank you. I gather during this presentation a
12 PowerPoint presentation was delivered.

13 MR. MCGOWAN: Madam Registrar, if we could please
14 pull up CPA Canada's document 51.

15 Q From your review of the records, have you seen
16 this PowerPoint presentation before,
17 Ms. Wood-Tweel?

18 A (MWT) Yes, I have.

19 Q This is a presentation that was presented by
20 FINTRAC to CPA Canada on March 4th, 2015?

21 A (MWT) Correct.

22 MR. MCGOWAN: If we could please turn -- some of the
23 pages are numbered, Madam Registrar, and some of
24 them aren't. But I'm going to ask that we turn
25 to page 12, please. Inconveniently a page that

1 doesn't have a page number, although it is
2 entitled "Examination Results in the Accountants
3 Sector." Has a chart on it. This is the one.

4 Q And this is, I gather, a depiction of the level
5 of compliance identified during compliance
6 reviews conducted by FINTRAC. Is that your
7 understanding?

8 A (MWT) Yes, that's what I understand.

9 Q Okay. And I wonder if you could just, if you're
10 able to, go through and explain what each of the
11 requirements identified on the left of the chart
12 are for the Commissioner. Starting with client
13 ID and moving down the page.

14 A (MWT) Right. So the responsibility to ID a
15 client under triggering activities, to keep
16 records, a two-year review of the compliance
17 program that is existing in the firm, training
18 for staff, as an example. The risk assessment,
19 to look at the nature of the practice and the
20 types of risks that the practice bears. I'm not
21 sure I'm a hundred percent on P&Ps and CO. If
22 you could just tell me what those refer to, I
23 would be able to respond. I'm just not sure
24 what people's shorthand is.

25 Q If I knew, I would be happy to tell you, but I

1 don't. I'm sorry.

2 A (MWT) I apologize. It's just I haven't taken
3 the acronyms into my brain yet about P&Ps and
4 COs. But I think -- the point, I think, of the
5 chart is and this is the take away for me when I
6 looked at it is that it's clear that certain
7 things were going well and people were
8 understanding their responsibilities and things
9 they needed to be doing and they were keeping up
10 with the requirements of the regime, and then in
11 other areas there weren't that same level of
12 success. So clearly room for improvement.

13 That's what I took from this. And I also
14 found the same types of commentary was in the
15 2016 FATF report with respect to the
16 profession's awareness of responsibility. So
17 took that under advisement in both cases.

18 (JH) I'm taking a stab. It may be -- P&P
19 may be policies and procedures, and CO,
20 compliance organization.

21 (MWT) There you go. Thank you, José.

22 Q And in CPA Canada's effort to address the need
23 for improvement one of the things it did was
24 prepare an alert for delivery to its members?

25 A (MWT) Yes. So the committee -- my understanding

1 Analysis Centre of Canada (FINTRAC), the
2 regulator in charge of Canada's anti-money
3 laundering and anti-terrorist financing
4 (AML & ATF) regime, has indicated to the
5 Chartered Professional Accountants of
6 Canada (CPA Canada) that the accounting
7 sector's AML & ATF compliance efforts
8 require improvement."

9 And that's the message to your membership, that
10 they need to do better; is that fair?

11 A (MWT) Yes.

12 Q If we move down to the bottom paragraph on that
13 page, please. I'm just going to read the first
14 sentence of that.

15 "The AML & ATF regime faces many
16 challenges in its fight against money
17 laundering and the financing of
18 terrorists. The accounting sector plays a
19 very important role in this battle given
20 the nature of its work"

21 What role do your members play in that battle?

22 A (MWT) well, I think there's two critically
23 important ones. One is obviously sculpted under
24 the legislation as reporting entities under the
25 legislation. We have responsibilities to comply

1 with the triggering activities, et cetera, so
2 clearly we're there because we matter. So that's
3 one of the ways in which we are important to the
4 battle. But the other way is because we are
5 obviously in the public interest working towards
6 the security of the financial system in Canada
7 at large and the capital system. That's part of
8 our role in the work that we do every day in our
9 craft.

10 Q Thank you. Flipping over to the third page of
11 the document, halfway down the page under --
12 just below the numbered list. Yes. And in this
13 alert one of the things it appears you're urging
14 your members to do in this paragraph that I've
15 pointed out is urging your members to do better,
16 and two of the areas that FINTRAC specifically
17 identified, that being mandatory two-year
18 effectiveness reviews and risk assessment and
19 effective risk mitigation plans?

20 A (MWT) Correct.

21 Q I wonder if you could just take a moment and
22 explain to the Commissioner what each of those
23 two items are.

24 A (MWT) Well, in the first there is a requirement
25 under the regime that you have to have a process

1 within a firm, within an accounting firm, and
2 you have to review your compliance process in
3 relation to the regime on a two-year basis. So
4 you're coming back to look at it. It's, I
5 think, from the point of view of the usefulness
6 of it, it's to put some fresh eyes back on it to
7 make sure that you're doing the right things and
8 that obviously there is a component of risk
9 associated with that, that you're addressing the
10 risks that are presented to you relative to who
11 your clients are or where you're operating or
12 the type of work that you're doing because risks
13 can come from different areas or pockets.

14 And then the risk assessment itself is to
15 evaluate the risks that are being faced with
16 respect to the reporting entity and to think
17 through, then, what the effective risk
18 mitigation plans are in respect of those risks
19 related to the work and to the nature of the
20 clients and also perhaps geography. There's a
21 number of things that will play into the risk
22 assessment that the firm needs to evaluate and
23 also establish how they will mitigate.

24 Q Okay. Has CPA Canada taken steps to assess
25 whether its membership has improved their

1 compliance in these two respects since this
2 alert was issued?

3 A (MWT) In a direct way no, and I think what we
4 have done is continued to collaborate with,
5 obviously, the regulators within the system, the
6 regime by participating in these federal
7 committees and we've also continued to
8 communicate with our members to ensure that the
9 level of awareness of the regime and also the
10 importance of AML in Canada is understood and
11 remains top of mind.

12 (JH) And, Mr. McGowan, if I could add. I
13 think that same FINTRAC presentation suggested
14 or stated that the risk posed by the accounting
15 sector was considered by them to be low. I may
16 be incorrect, but I thought that -- I recall --
17 I was not at that meeting obviously, but I
18 recall that there were some compliance
19 exceptions that triggered the alert, but on the
20 other hand they seemed to have stated -- I was
21 not at that meeting -- that the risk of the
22 sector was deemed by them to be low.

23 Q Okay. Do you feel it's important for CPA Canada
24 to have a lens into the degree to which the
25 membership is responding to feedback like this

1 in improving its understanding and compliance?

2 A (MWT) Well, I think -- what I think about as I
3 move forward with where we are today when we
4 look at the 2021 guide coming out and our
5 efforts with respect to rolling out the
6 educational plans and the communications is that
7 I think that we need through our process to
8 develop some feedback loops to be able to hear
9 back from the membership around what they're
10 experiencing with respect to either their
11 awareness or their problems or their questions
12 or their compliance issues.

13 It's not to be forgotten that FINTRAC, being
14 the entity that was created under the
15 legislation as the regulator, also has the
16 ability to provide answers to questions that the
17 firms might have. It also provides information
18 that is useful to the firms. So I think what we
19 need to do is to balance our efforts to be able
20 to essentially work together with the regulator,
21 being FINTRAC, in order to ensure that members
22 are aware and getting the best kind of
23 information to enable them to do their best job.

24 Q Thank you. Has FINTRAC since this alert was
25 issued provided you information that lends

1 insight into whether the membership has improved
2 their understanding and compliance in respect of
3 the two items identified in the alert?

4 A (MWT) They gave no specific information to the
5 profession.

6 MR. MCGOWAN: Thank you. We can move on from that
7 exhibit, Madam Registrar.

8 Q One of the ways FINTRAC might assess the level
9 of compliance, I gather, is compliance
10 examinations?

11 A (MWT) Yes.

12 Q Maybe you can tell the Commissioner what a
13 compliance examination is.

14 A (MWT) It's to look at the ways in which the
15 reporting entity has complied with the
16 requirements under the regime. So, for example,
17 do they have the training in place; do they have
18 someone identified as the person who is going to
19 be the coordinator of this within their
20 particular firm; are they doing the reviews.
21 These are done in different ways. They can be
22 done and I'm sure they are right now with
23 COVID-19 being done by essentially desk, but
24 they also can be done in person, and there is an
25 entire guide associated with the review process.

1 Q Okay. Have you been provided or obtained
2 information about the number of compliance
3 reviews that are conducted by FINTRAC on an
4 annual basis of your membership?

5 A (MWT) No.

6 Q The commission has before it some evidence to
7 suggest that in 2009 there were 48 reviews
8 conducted. In each of the other years between
9 2008 and 2014 there was a maximum of 25 and at
10 least one year there was no examinations. Is
11 that level of investigation sufficient, in your
12 view, to lend insight into the level of
13 compliance for your 220,000 members?

14 A (MWT) Well, first of all, some context there.
15 It's not the 220,000 members. That's the total
16 membership of the profession, 20 percent of
17 which is involved in public practice and then
18 there would be a fraction of them that might be
19 involved in triggering activities. So we have
20 to sort of narrow down the scope of who we're
21 talking about.

22 But my understanding throughout the regime
23 in Canada is that Canada's regime taking the
24 lead from what has been also the international
25 position is that the entire system should be

1 risk based. So FINTRAC is the recipient of
2 information that only FINTRAC can see. I can't
3 see what they can see. They can see the
4 information they're getting, and the information
5 they're getting I am sure is leading information
6 because they're seeing where the problems are,
7 they're seeing where the issues are. From that,
8 using their risk-based analysis, I'm sure they
9 deploy their resources in respect of that.

10 Q From CPA Canada's perspective one of the things
11 that is an unknown is the percentage of your
12 membership that engages in triggering
13 activities; is that fair?

14 A (MWT) That would be correct. And as I
15 mentioned previously, my working methodology
16 myself is to go with my basis and understanding
17 of the type of work that the profession does.

18 MR. MCGOWAN: Thank you. Mr. Commissioner, I think I
19 neglected to ask that the PowerPoint
20 presentation be marked as an exhibit.

21 THE COMMISSIONER: Very well. That will be the next
22 exhibit, which I think is 408, Madam Registrar.

23 THE REGISTRAR: That's correct, Mr. Commissioner.
24 Exhibit 408.

25 **EXHIBIT 408: FINTRAC presentation - Anti-Money**

1 **Laundering and Anti - Terrorism Financing in**
2 **Canada (CPA Canada) - March 4, 2015**

3 MR. MCGOWAN:

4 Q Does CPA Canada engage in any sort of analogous
5 effort to audit compliance or investigate
6 compliance of its membership?

7 A (MWT) No. CPA Canada is not a regulator and has
8 no mandate for regulation. The regulation is
9 carried out by the provincial bodies according
10 to their provincial statutes.

11 Q And provincial bodies will engage in practice
12 reviews of their members?

13 A (MWT) Provincial bodies do have practice
14 reviews, yes, associated with public accounting
15 services.

16 Q Are you aware of whether any of the provinces'
17 regulators as part of the practice reviews
18 assess compliance with the AML obligations?

19 A (MWT) I am not. The -- one of the things that
20 we do as the profession is we try to work
21 together, as I mentioned at sort of the outset
22 of the questioning today, in relation to coming
23 to harmonized processes as best as we can. And
24 they're not always possible, but as best as we
25 can. The practice review program is one of

1 those harmonized process. So from coast to
2 coast as you look at a small firm, big firm,
3 middle-sized firm, Main Street, downtown,
4 wherever, the practitioner should be seeing the
5 same type of practice inspection taking place.
6 It does not include anti-money laundering
7 because the focus of the review is professional
8 standards and associated with generally accepted
9 accounting standards and generally accepted
10 audit assurance standards.

11 Q Thank you. We've spoken about the feedback
12 received from FINTRAC, and one of the other
13 pieces of feedback that you alluded to in your
14 evidence, or perhaps it is Dr. Hernandez, was
15 the 2016 fourth mutual evaluation findings that
16 were published by the FATF in 2016.

17 A (MWT) Yes.

18 Q And my understanding is that amongst that
19 feedback was the observation of the FATF that
20 the accountants' level of awareness of AMLCTF
21 obligations was low, and further, they expressed
22 concern about the fact that few or no STRs had
23 been filed by accountants. You're familiar with
24 that feedback?

25 A (MWT) Yes, I am.

1 Q What did CPA Canada do to respond to that
2 feedback and -- if anything, in an attempt to
3 improve compliance of its membership in those
4 areas?

5 A (MWT) So I actually can't tell you with respect
6 to where that information was actually obtained
7 from. I read the report like you did. I don't
8 know who spoke to FATF. I've never been able to
9 confirm whether that was a committee member, was
10 it a staff person. It's not clear to me who
11 provided the insight and on what basis. With
12 respect to the report itself, I can tell you
13 from my own perspective what it meant to me
14 because, as I was taking up this role in 2017,
15 the very first thing that I actually did was
16 looked at the FATF 2016 mutual evaluation of
17 Canada and coming across the information was
18 concerned and perplexed. So my concern relative
19 to -- and there's obviously all kinds of issues
20 associated with that report and improvements for
21 Canada.

22 But, you know, one of the them was in
23 relation to accountants and their awareness and
24 STRs. So STRs was one the ones that I
25 investigated, first off, to try and understand

1 what is the issue associated with STRs and how
2 does it look compared to other places. So that
3 was one of my beginning points.

4 Q Okay. Let's talk about STRs because it's one of
5 the issues that was raised. And I've taken a
6 look at the numbers from 2011 to 2018. The
7 commission's been provided some information
8 about that. And in each of those years with the
9 exception of 2016 there was either zero or one
10 STR filed across the country, 2016 being the
11 high watermark in that period with three STRs
12 filed. It strikes me that's a relatively small
13 number and likely what gave rise to expression
14 of concern on the part of the FATF. Do those
15 levels of reporting cause concern for CPA
16 Canada?

17 A (MWT) Well, I think what I've tried to do is,
18 when you say "concern," consciousness. I'm very
19 conscious of that information and it's on my
20 mind. When I look at the information -- when
21 you use the word "low," I also wouldn't want the
22 number to be high. And the reason I wouldn't
23 want the number to be high is because I would
24 not want to think that we've got members
25 engaging in activities in such volume,

1 triggering activities in such volume that they
2 are seeing such numbers with respect to
3 suspicious activity in relation to their work
4 because it starts to make me question how did
5 they accept the engagement in the first place to
6 be involved.

7 And I go back to the code and say that there
8 are a variety of reasons and ways in which the
9 assessment should be done that that CPA knows
10 the type of work that's going on. And so I do
11 say that I would not want to see that number
12 being high. Is the number what the number
13 should be. I'm not a hundred percent sure of
14 that. And I guess the only way we would ever
15 know that is to actually be the practitioners
16 themselves. But for the point of view of saying
17 awareness might improve the level of reporting,
18 I'm all for that, a hundred percent, in saying
19 that we need to ensure that the level of
20 awareness is there so that if a report needs to
21 be made, it's done and it's not that at report
22 isn't being made because we don't know that it's
23 supposed to be.

24 Q Right. The reporting obligation arises not just
25 in respect of transactions that are completed

1 but transactions that are attempted; fair?

2 A (MWT) Right.

3 Q So in your view would that include circumstances
4 where a client's attempts to engage the
5 accountant in a transaction but the accountant,
6 because of the professional obligations,
7 recognizes the suspicious circumstances and
8 declines to complete the transaction?

9 A (MWT) I have to unpack that one, in part,
10 because you have to go to activity in the first
11 place. The triggering activity. So if you are
12 performing a triggering activity, you then are
13 already into the place within the regime that
14 you have a reporting requirement whether the
15 transaction is completed or not.

16 Q Okay. Thank you. Has CPA undertaken any
17 investigation or activity to assess whether
18 there are a significant number of transactions
19 or additional transactions that ought to be
20 reported that aren't being reported?

21 A (MWT) No.

22 Q When you look at these numbers does it appear to
23 you as if there must be transactions or
24 attempted transactions that fall within the
25 reporting regime that are not being reported to

1 FINTRAC?

2 A (MWT) I don't have that reaction to it. So I do
3 not look at it and say there's a number and it
4 must be wrong. I take the number on its face
5 and I take the information on its face that we
6 have to improve awareness, and I say, then,
7 that's what we have to do.

8 Like I said, you know, part of my mindset
9 around this is the fact that I think about the
10 nature of the work that we do. I think about
11 the nature of the services that we provide that
12 might interact with triggering activities. And
13 as I mentioned one already, insolvency and
14 bankruptcy pursuant to the *Bankruptcy &*
15 *Insolvency Act*. And then I think about what are
16 all the other services that might happen where
17 these triggering events may be occurring, and I
18 don't think it is core to the Canadian
19 profession.

20 And I think one of the things that -- one of
21 the ways in which I have started to evaluate
22 that in terms of my thinking about it is that I
23 have looked at other jurisdictions. So as an
24 example, when you go to other places where it
25 may be possible as an example for an accountant

1 to be involved in services like forming a
2 corporation or creating trusts or partnerships,
3 when you look at, in the UK, this entire group
4 of people, many of whom are in the accounting
5 services in the UK called trust and company
6 service providers, we don't have an equivalent
7 here in Canada in my view.

8 So I've tried to understand in -- relative
9 to our scope of practice the work that we do,
10 the nature of the services that we provide our
11 clients, how common are triggering activities in
12 my view, and obviously minus the exceptions that
13 are in the regulations and go from there
14 thinking about what I'm seeing.

15 Now, if you've been incredibly aware and if
16 you have been fastidious about how you've
17 gone -- entered into business with clients,
18 there may never be a point that you see a
19 suspicious transaction, to be quite frank. And
20 maybe we are all lucky in our careers if we
21 don't see them. But I am also aware of saying
22 that there is a number that could be too low and
23 there is a number that I don't want to see to be
24 too high because that would make me worry about
25 other things.

1 So where we are in that middle, I really
2 can't tell you per se in terms of a fast and
3 hard number. And awareness, I think, is where
4 we get to finding more of -- whether there's
5 more to be reported or not.

6 Q In your assessment is there a realistic
7 possibility that not a single one of your
8 members over the course of a year in some years
9 was connected with an attempted transaction that
10 rose to the level of engaging the reporting
11 requirements?

12 A (MWT) Well, the only thing I can tell you is
13 that -- and this becomes very personal, but the
14 truth is I'm 37 years in the profession and I've
15 never been involved in one, and I've done a lot
16 of things. So as I look at it myself and I say,
17 is it possible? Yes, it's possible. Is it
18 absolutely the right answer? I have nothing to
19 say that it would be the right answer. Is there
20 the possibility that people weren't aware of
21 something that they saw in order to be able to
22 even think about it to say something about it?
23 Absolutely.

24 So as I say, I can't reconcile specific
25 numbers as being low or high. My intent in

1 relation to all of this is to ensure that people
2 are basically armed with the information that
3 they need in order to make the decisions that
4 they are supposed to make under the regime.

5 Q Okay. The FATF and FINTRAC expressed concern to
6 CPA Canada about the level of reporting; is that
7 fair?

8 A (MWT) Yes, I think you could say that.

9 Q And in response to that CPA Canada undertook
10 efforts to improve the level of understanding
11 and the level of reporting?

12 A (MWT) Correct.

13 Q And in the face of those efforts on my reading,
14 the number of suspicious transaction reports has
15 not gone up. Is that a fair reading of the
16 numbers?

17 A (MWT) Yes, that's probably true, which is why
18 I've done as much thinking as I have about how
19 STRs occur in Canada.

20 MR. MCGOWAN: Mr. Commissioner, I'm going to suggest
21 that we pause for a break now, and I'm going to
22 ask that we take 20 minutes. One of the
23 witnesses has a matter they need to attend to.

24 THE COMMISSIONER: Yes, that's fine. We'll take
25 20 minutes at this point. Thank you.

1 MR. MCGOWAN: Thank you.

2 THE REGISTRAR: The hearing is adjourned for a
3 20-minute recess until 11:19 a.m. Please mute
4 your mic and turn off your video. Thank you.

5 **(WITNESSES STOOD DOWN)**

6 **(PROCEEDINGS ADJOURNED AT 10:59 A.M.)**

7 **(PROCEEDINGS RECONVENED AT 11:19 A.M.)**

8 MICHELE WOOD-TWEEL,
9 called for the
10 commission, recalled.
11 JOSÉ HERNANDEZ,
12 called for the
13 commission, recalled.

14 THE REGISTRAR: Thank you for waiting. The hearing
15 is resumed. Mr. Commissioner.

16 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
17 Mr. McGowan.

18 MR. MCGOWAN: Thank you, Mr. Commissioner.

19 **EXAMINATION BY MR. MCGOWAN (continuing):**

20 Q Ms. Wood-Tweel, am I correct that the -- that
21 CPA Canada makes available to its members a
22 practitioner's toolkit which provides guidance
23 on practice-related matters, including on
24 regulatory and risk management matters? I think
25 you're muted.

1 A (MWT) My apologies.

2 Q Don't worry. It happens to me at least once a
3 day.

4 A (MWT) Yes, there are a number of products and
5 publications that CPA Canada makes available.
6 That is one.

7 Q And does that practitioner's toolkit in the
8 module dealing with regulatory and risk
9 management or elsewhere address AML reporting
10 obligations?

11 A (MWT) I'm not aware that it does, and I did take
12 in the comments by Mr. McGuire, which I thought
13 were useful. I think it would be one of the
14 things that we would look to do as we publish
15 2021 guide is look for the other areas within
16 CPA Canada's products and publications where we
17 can expand the reach of the AML information
18 where it's relevant.

19 Q Okay. Thank you. Are you aware of whether in
20 BC or other provinces in Canada non-compliance
21 with FINTRAC reporting requirements would be an
22 infraction for which a member could be
23 disciplined or sanctioned?

24 A (MWT) I can't speak -- in my role I can't speak
25 to the regulation of the members because that's

1 not actually what I do. What I would certainly
2 suggest in reference to my general knowledge as
3 a member of the profession is certainly that
4 there are requirements to report things to the
5 profession, and it could include regulatory
6 breaches.

7 Q Okay. Thank you. Dr. Hernandez, I want to ask
8 you a few questions about some thoughts that I
9 understand you have on suggested improvements to
10 the AML regime in British Columbia. And I
11 understand that you in conjunction with CPA
12 Canada in 2017 provided a response to Finance
13 Canada's request for input on issues related to
14 that.

15 MR. MCGOWAN: And I wonder if we might just bring up
16 CPAC14, please.

17 Q Dr. Hernandez, were you involved in authoring
18 this correspondence?

19 A (JH) Yes.

20 Q And then have I correctly characterized it that
21 it was a response to a request by Canada for
22 input?

23 A (JH) Yes. With the additional detail that we
24 had started a discussion with -- particularly
25 following the FATF results. We had communicated

1 to Finance Canada that -- you know, that we had
2 some ideas on matters which could strengthen the
3 overall regime. And then it happened that there
4 was a request for consultation, so there was an
5 avenue to formalize that input.

6 Q Okay. And what --

7 A This is the letter that formalizes the input.

8 Q And what was it that Canada had -- Finance
9 Canada had requested?

10 A (JH) They were looking for overall improvements.
11 They were looking at, you know, proceeds of
12 money launderers finance in the law, but they
13 had tried to look at how do we respond to the
14 FATF review. And we took this opportunity to
15 lay out the pillars for a successful regime and
16 particularly for me being a Canadian but working
17 abroad, trying to bring those best practices to
18 our nation.

19 MR. MCGOWAN: Mr. Commissioner, this is appendix V to
20 the background report that was filed.

21 Q So, Dr. Hernandez, we have this before the
22 Commissioner, but I wonder if you might just
23 take a moment and outline the pillars that you
24 communicated to Finance Canada in this
25 correspondence.

1 A (JH) Okay. It would be useful perhaps to go to
2 the next page so that --

3 Q I'll allow you to direct Madam Registrar where
4 to go.

5 A (JH) So maybe start right there. So if I
6 read -- so our view was, you know, we are
7 dedicated and focused on public trust. We are
8 taking note, in the first paragraph, of the FATF
9 assessment on Canada's regime.

10 The next paragraph is really important
11 because regardless of triggering activities or
12 otherwise, you know, this is a real threat and a
13 major issue, not just money laundering but other
14 forms of corruption, if we take note of the
15 corruption scandals in Quebec and other parts of
16 our nation and really our reputation is
17 important.

18 In the third paragraph, you know, we outline
19 five areas. But if I could -- the very first
20 one in the mentality or the mindset that came to
21 this is how do we enable businesses,
22 corporations to do better business. How do we
23 enable Canada to flourish as it should and
24 rather than allow our system to be misused. So
25 the first recommendation, point number 1, on

1 paragraph 3 was we do need to enhance
2 transparency of ownership of assets and not just
3 for the sake of filling a register that looks
4 good and make us feel comfortable at home but
5 rather to help corporations, third parties, do
6 due diligence on each other to make sure that we
7 not -- inadvertently becoming involved in
8 activities that we should not. So that was the
9 very first pillar which led to many other
10 contributions that we made to the federal
11 government around strengthening beneficial
12 ownership.

13 The second big pillar was really, you know,
14 looking at responsibility in general. But
15 really one of the major issues -- and I'll jump
16 to point 4 -- was law enforcement and
17 prosecution. There needs to be a real
18 deterrence factor. Filing a suspicious
19 transaction report with no consequences or not
20 being able to bring a case, not being able to
21 fine corporations, not being able to provide the
22 incentives for a more enhanced compliance
23 program for remediation. At the end of the day
24 there needs to be a cost of crime; right? So we
25 can all do -- employ all these great efforts,

1 but we do need to strengthen law enforcement.

2 Point number 2 is -- but we also need to
3 feed law enforcement. We need to feed
4 information to law enforcement, whether it's
5 through suspicious transaction reporting or
6 otherwise. So we suggested that compliance
7 programs as a whole are our key element but also
8 the whistle-blowing regime.

9 Which gets to point number 3, how do we
10 create that incentive and a protection.
11 Incentive for individuals to speak up and report
12 on matters but also having the ability of law
13 enforcement to follow up with these individuals
14 in order to bring a matter to a close.

15 And so beneficial ownership, prosecution and
16 whistle-blowing were the three pillars. And the
17 suggestion of -- there's so many good practices
18 out there. And the United States is one example
19 with their new law. I mean, for a long time
20 they had a patchwork of activities, were very
21 good at prosecuting. But, for example, now
22 they're looking into beneficial ownership and
23 having a register available for law enforcement,
24 which is a major, major step.

25 If you look in Europe, you know, we have

1 this EU anti-money laundering directive, you
2 know, bringing in registers, but we also have a
3 EU directive on whistle-blowing, so introducing
4 more safeguards. And -- but if we did those
5 three things, in my view, and discontinued --
6 perhaps go a little bit further below. It was
7 just an elaboration of each of these elements,
8 but we do need a framework. And it gets to a
9 theme: we need to work together. It's not like
10 one is the enemy. And, you know, we need to
11 work -- government, businesses, professions, the
12 public, all need to work together as a whole.
13 And we suggested a strategic framework, which
14 they were receptive to hear our views and to put
15 the ideas forward.

16 MR. MCGOWAN: Thank you, Madam Registrar. That can
17 come down now.

18 Q Dr. Hernandez, I understand from materials you
19 provided that one the things you recommend is
20 the development of a legal framework similar to
21 those in some other countries such as the United
22 States that incentivizes organizations in the
23 public interest to self-report and cooperate
24 with law enforcement and remediate instances of
25 misconduct. I wonder if you could perhaps

1 elaborate on your views on that for the
2 Commissioner.

3 A (JH) Thank you. I mean, for the last -- I live
4 in Europe, the first major case that I dealt
5 with on fraud was in 2003. And mainly you know
6 the complaint in Europe is the extraterritorial
7 reach of the US regime, whether it's for fraud
8 standards, corruption standards or money
9 laundering statutes. One of the things that was
10 done very, very effectively, if you look at the
11 what is the incentive to cooperate and what is
12 the incentive to self-police for an
13 organization. Self-report, remediate and
14 cooperate with law enforcement altogether.

15 And United States has been working on this,
16 and the SEC has the Seaboard Report that goes
17 back a few decades. The Department of Justice
18 provides these incentives. So there are these
19 legal frameworks where you want a corporation to
20 self-report and cooperate but you also do not
21 want to say that you're not going to give them
22 any credit for cooperating or you're just going
23 to give the maximum fine because of the sins
24 we're committing. So you're actually promoting
25 rehabilitation and promoting a partnership to

1 combat these deeds and focusing on remediation,
2 rehabilitation and preventing these matters from
3 occurring.

4 So the principle is that there's a
5 framework, that there is an understanding and
6 that both -- all parties, regulators,
7 prosecutors and corporations, work together each
8 with own mandates. You know, a corporation has
9 their own governance, standards and
10 expectations, but regulators and prosecutors
11 can't prosecute everything. So by them working
12 together and being able to share with the
13 incentive that you're not going to be piling on
14 everything that you can in terms levying fines
15 and penalties. That's just an opportunity for
16 our country.

17 Q Thank you. Ms. Wood-Tweel, given the concerns
18 that have been expressed about the level of
19 understanding of your membership and the level
20 of compliance with reporting requirements, has
21 your organization considered in conjunction with
22 the provincial bodies mandating some mandatory
23 AML training or education for your membership?

24 A (MWT) Well, first of all, the mandatory CPD
25 requirements that we have do contain a mandatory

1 portion that is ethics driven. So one of the
2 things that we have done in both a program that
3 was designed by CPABC and as well one that is
4 nearing completion at CPA Canada is to
5 incorporate within that mandatory ethics piece
6 information about money laundering. So it's not
7 mandatory about money laundering per se, but
8 it's going into the mandatory portion related to
9 ethics, which is part of the CPD. The CPD that
10 our members have to take has to be relevant to
11 the work that they do. So if money laundering
12 or anti-money laundering is relevant to the work
13 that they do, then that is acceptable CPD
14 according to the profession. And we've included
15 this one piece in the ethics.

16 Q In your view would there be some merit perhaps
17 for requiring those who engage in triggering
18 activities to take some continuing education on
19 the topic of AML and reporting requirements?

20 A (MWT) I think it becomes part of a broader
21 conversation, and I mean this very respectfully.
22 It's the issue that our CPD requirements are
23 based on a foundation of professional judgment
24 that you should be taking what is relevant to
25 the work that you do. So as an example, we do

1 not mandate that if you're doing tax you have to
2 do tax. We don't mandate that if you're doing
3 insolvency you have to do insolvency. It
4 becomes a matter of professional judgment as to
5 what the CPD is required by the individual
6 relative to their work and what they need to
7 accomplish within that period of time. So that
8 would be, you know, in part the answer to it.

9 I think the way that we are addressing it in
10 terms of including money laundering in part of
11 the ethics which is mandatory as part of the
12 overall CPD mandatory requirements is one way to
13 in fact get at that.

14 Q Thank you. Dr. Hernandez, do you have anything
15 to add?

16 A (JH) Yeah, I think there's two ways of looking
17 at it, and one is creating the push and the
18 other one is the pull. I've been invited for a
19 number of years now in a row to the annual audit
20 committee conference organized by CPA Canada and
21 to speak to directors or would-be directors
22 about, you know, what going on with white collar
23 crime, but more importantly what can they do
24 from a governance perspective.

25 I've been invited to the CP1 event in

1 Montreal when -- you know, when it used to be
2 that 2,000 people could come together in one
3 particular location at a time. So -- and then
4 speaking at different conferences.

5 So there is that element that the profession
6 is pulling and requesting information about
7 these hot topics, and you have to understand
8 that the profession tends to be -- accountants
9 tend to be risk adverse. You know, these are
10 not the individuals that are skydiving and
11 bungee jumping and doing -- and wanting to
12 undertake a high-risk activity, so -- but
13 they're -- you know, first of all, they consider
14 this subject dirty but something that is so
15 pressing and relevant that they do need to
16 understand more.

17 So there's a lot of activities that are
18 occurring. And I'm just a volunteer. I do not
19 work for CPA Canada. That's not -- so I get
20 pulled to a number of these items, as Michele
21 and others do, because the profession wants to
22 know and wants to learn.

23 MR. MCGOWAN: Thank you. Mr. Commissioner, those are
24 my questions for this panel.

25 I thank you both for taking the time to

1 answer my questions.

2 THE WITNESS: (MWT) Thank you.

3 THE COMMISSIONER: Thank you, Mr. McGowan.

4 Now, Mr. Rauch-Davis on behalf of
5 Transparency International Coalition, who has
6 been allocated 15 minutes.

7 MR. Rauch-DAVIS: Thank you.

8 **EXAMINATION BY MR. RAUCH-DAVIS:**

9 Q Ms. Wood-Tweel, I'll start my questions with
10 you. You mentioned in brief this morning that
11 know-your-client obligations, I think there's
12 two components to it. There's the ethical
13 requirements on accountants and there's also
14 those requirements under the *PCML Act*. Do I
15 have that right?

16 A (MWT) With respect to the triggering activities
17 and ID'ing your client, yes.

18 Q Yes. And am I right in my understanding that
19 there are changes to the due diligence
20 requirements for accountants on beneficial
21 ownership coming this summer?

22 A (MWT) Yes.

23 Q And could you just explain what those changes
24 are going to be?

25 A (MWT) There will be a requirement to verify

1 beneficial ownership where the requirement to ID
2 a clients it required under the *PCMLTFA*.

3 Q And is that for -- solely for triggering
4 activities?

5 A (MWT) Yes.

6 Q And do you know what specifically that would
7 look like, what accountants will be required to
8 do to verify the identity of their clients?

9 A (MWT) Well, I think in part this is going to
10 depend where we are with respect to the
11 beneficial ownership register legislation that
12 is evolving in the country in the various
13 provincial jurisdictions, and will there be
14 information already available within a corporate
15 entity that they can refer to and verify or are
16 they going to have to start from scratch because
17 the information hasn't in fact been kept. So
18 that's one of the questions that looms around
19 the effective date of June 1st, 2021.

20 Q Right. Because I believe the language under
21 FINTRAC is using something like a reliable
22 source, taking reasonable measures to ensure the
23 accuracy of the client's ownership information.

24 A Right.

25 Q Is that your understanding as well?

1 A (MWT) Yes.

2 Q Yeah. And so I take it you agree with me that a
3 beneficial ownership registry would likely be
4 the easiest tool for accountants from across the
5 country to confirm that information.

6 A (MWT) Yeah. And so can I just be precise on
7 your wording. You use the word "registry" and I
8 think you're referring there to where
9 information from a corporation's register has
10 been reported to a registry; is that right?

11 Q Yes, that's right.

12 A (MWT) Yes, I agree that a beneficial ownership
13 registry would certainly be a valuable tool in
14 Canada at this time with respect to the
15 obligations under the *PCMLTFA* for accountants
16 and other entities.

17 Q That would alleviate concerns and even costs of
18 due diligence on accountants, wouldn't it?

19 A (MWT) Well, I think it's broader than that. I
20 think my answer is based on more what I would
21 view as being a public interest answer. The
22 benefits of a public registry or a registry that
23 has some form of public information means that
24 people, as José has alluded to here this
25 afternoon, can determine who it is that they're

1 dealing with. So that's very important in the
2 public interest.

3 When you look at the participants or the
4 reporting entities under the regime, the
5 financial institutions have had to bear this
6 beneficial ownership requirement for a long
7 time, and it can be very complex to wade
8 through. I think the registry is something that
9 enhances the regime and I think it actually
10 enhances the public interest in Canada.

11 Q Thank you. Ms. Wood-Tweel, you also gave
12 evidence this morning that -- I believe that
13 identification verification in a beneficial
14 ownership registry is essential to an
15 effective -- is essential to the registry. Are
16 there any other aspects that you think are
17 essential to an effective registry? Accomplish
18 the public interest goals you've just mentioned.

19 A (MWT) One that I think is very important in
20 Canada as a country because of our federated
21 model is the need to maintain consistency as
22 much as we can. And it's never perfect and it's
23 never always exact, but it is going to be
24 something that's going to be useful in a
25 registry scenario simply because as we travel

1 across borders, as people do business across
2 borders or as law enforcement tries to prosecute
3 across borders or what have you, we have to be
4 able to know that we're sort of comparing apples
5 to apples and not apples to oranges. So the
6 level of the consistency of the information that
7 contained in the register as well as the nature
8 of the verification of it that's it's
9 information that can be relied on. It may be
10 able to be improved through use but can be
11 relied on as verified I think is very important.

12 Q And by maintaining consistency and when you
13 allude to cross borders, you mean provincial
14 borders; right?

15 A (MWT) Provincial borders and obviously also in
16 Canada with the *Canada Business Corporations*
17 *Act*.

18 Q Right. But in one way to accomplish that type
19 of goal is set up some sort of centralized
20 federal agency with national standards for each
21 province to abide by or cooperation to that
22 effect?

23 A (MWT) Well, I think then you could get into
24 something -- just by the way you framed it, I
25 think you could get into something that might

1 become duplicative. And the reason I say that
2 is because the provinces -- you know, they have
3 a basis upon which to move this forward relative
4 to their corporate registry process. So whether
5 a particular province feels that it needs extra
6 information or slightly different information,
7 there are going to be nuances across the
8 country. And I think one of the particular
9 provinces where we know that there are unique
10 ways in which they drive their process and what
11 they want to see coming out of their system is
12 Quebec in relation to where they have been with
13 the information in the enterprise registry and
14 where they would like to go into the future.

15 So I don't think necessarily the answer is
16 that we now have to construct something new at a
17 national level with new standards. I think what
18 we need to do is we need to be able to get
19 through -- whether technology or something else,
20 we have to be able to enable something that
21 spans the entire country that people can access
22 as they need it. So law enforcement,
23 individuals like designated non-financial
24 business and professional individuals that have
25 responsibilities under the *PCMLTFA* also should

1 be able to access the information to comply with
2 the regime.

3 Q But I take it your overall -- I think I have
4 your evidence is still that the standards should
5 be consistent across the nation. They should
6 be --

7 A (MWT) We would argue, and it's much of what we
8 apply to ourselves as a profession that operates
9 nationally and provincially. You look for
10 harmonization to the extent that it's possible
11 and you hope that you can get as close to
12 harmonized as you can. In the very end that's
13 what you're looking for, that's the goal. It
14 may not be exact, but ...

15 Q Thank you. Isn't another critical asset -- or
16 critical aspect of an effective registry going
17 to be having some sort of public access to the
18 information. And perhaps this is a question
19 that Dr. Hernandez might be able to answer as
20 well. But just in that it enables the public to
21 engage in the three pillars that Dr. Hernandez
22 was referring to earlier.

23 A (MWT) José, do you want to go?

24 (JH) Yeah. No, I mean, I think you do want
25 public access. You do not want, you know, a

1 crowd-funding or crowd-sharing model where you
2 can't hold anybody accountable for a particular
3 issue. So I think it needs to go in steps. It
4 needs to have maximum information for law
5 enforcement to prosecute. That's clearly a
6 priority. But you also need to have -- you do
7 need to put the responsibility where that
8 belongs. You should not outsource that
9 responsibility because one of the thing we want
10 is accountability. So that is important.

11 And as Michele points out, you do not want
12 complexity and to have a duplicative system, but
13 you do need information in the public domain.
14 And there are very, very good examples. Even
15 places like China ten years ago, you know, you
16 could not get information and now there's great
17 databases. Same in Europe. And it's easily
18 accessible. It does not -- so you do need to
19 balance the privacy elements, but it does need
20 to go in stages. Just like in US is another
21 good example. You know, their information is
22 not necessarily in the first instance going to
23 be public, but in due course just by the nature
24 of business you're likely going to see a change.
25 Q Right. And, Dr. Hernandez, I take it you would

1 agree that without public access, the goal of
2 fostering a whistle-blowing culture or even
3 enabling the private industry and public at
4 large to facilitate successful prosecutions
5 would be severely hampered. If it's all private
6 access, then those goals get extremely hampered.

7 A (JH) I would look at it differently. I see
8 whistle-blowing as, you know, you see certain
9 activities, certain transactions, a pattern of
10 behaviour that you have information and concerns
11 and you elevate that. I don't necessarily see,
12 you know, going in and in that particular
13 registry and doing an analysis of that registry.
14 I see those two things as separately, but of
15 course there is a complementary component to
16 having these things working together.

17 Q Thanks. Back to Ms. Wood-Tweel. Just a few
18 more questions. When my friend was asking
19 questions this morning on whether there's a
20 realistic possibility that not a single
21 member -- CPA member was connected with an
22 attempted transaction that rose to the level of
23 a reporting requirement, I have a note that your
24 evidence was that you have nothing really to say
25 on that, and in the 37 years in the profession

1 you have never done one.

2 Do you know, has CPA Canada undertaken any
3 efforts to determine if the amount of STRs ought
4 to be higher?

5 A (MWT) Well, the efforts that we've undertaken to
6 this point are exactly as I've indicated in
7 relation to creating awareness and educating our
8 members. I think the point that -- in relation
9 to when I was speaking to Mr. McGowan about, you
10 know, numbers, my inability to know whatever
11 number is the right number -- and if anybody can
12 ever tell me what that number is, please do
13 because we have to be able to see through our
14 members' eyes what they are seeing.

15 I don't know what the right number will be,
16 but I take under complete and serious advisement
17 that we are being told that the numbers appear
18 low to those who are the people working within
19 the systems. So I think that what we have to do
20 is enable, as I mentioned before, our members to
21 comply as best as they can within the services
22 that they are providing to make sure that
23 they're aware. If there's something they're
24 seeing that should be in fact reported that
25 they're doing so, and that it's not by chance

1 that they haven't reported something they would
2 have otherwise reported if they'd only been
3 aware. That would be the worst outcome from
4 where I stand in terms of my role as CPA Canada.

5 Q But to your knowledge has CPA Canada undertaken
6 any effort to obtain any sort of empirical data
7 on that type of -- on that issue?

8 A (MWT) Specific by doing, for example, surveys
9 with members and such, no. But it is on my
10 horizon. It's one of the things that I'm
11 interested in knowing more about because, as I
12 mentioned to Mr. McGowan earlier, this
13 information is relevant not only for purposes of
14 what the regime is concerned about, but it also
15 could help us understand the types of
16 transactions that members are in fact becoming
17 involved in, which may relate to what CPD they
18 should be doing, which may relate to the nature
19 of the business as it's evolving.

20 And the business that we're involved in in
21 the business of accounting is obviously very
22 fast moving with respect to technology, with
23 data, digital, with cryptocurrencies coming on
24 board. There's many different things that are
25 swirling around us as a profession and we're

1 moving forward. So one of the big projects we
2 have going on in the profession right now is
3 around future focusing the profession for these
4 dynamic times. And the type of information that
5 you're questioning about I think actually could
6 be useful in regard to that.

7 MR. RAUCH-DAVIS: Thank you. Those are my questions.

8 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

9 And now Ms. Effendi on behalf of the
10 Chartered Professional Accountants of Canada,
11 who has been allocated 30 minutes.

12 MS. EFFENDI: Thank you very much, Mr. Commissioner.

13 **EXAMINATION BY MS. EFFENDI:**

14 Q Good afternoon, Ms. Wood-Tweel. Good afternoon,
15 Dr. Hernandez.

16 A (MWT) Good afternoon.

17 (JH) Afternoon.

18 Q I just have a few questions for the both of you.
19 I will try to direct my question to the
20 individual that I think might answer, but
21 obviously I invite the other to jump in.

22 First, I'm grateful for my colleague
23 Mr. McGowan for having entered the background
24 report as an exhibit. And I just thought I'd
25 like to ask a few questions about that

1 background report of the various activities
2 engaged by the CPA profession as it relates to
3 AML.

4 One of the things that was discussed with
5 Mr. McGowan this morning, and I believe that was
6 with you, Ms. Wood-Tweel, was the issue of the
7 CPA AML committee as well as their effort as it
8 related to the 2014 guide. And one of the
9 things that I heard you mentioned to Mr. McGowan
10 was the fact that prior to that guide, and I
11 believe you said that there were many other
12 guides within the legacy organization, and so --
13 the legacy provincial bodies. And you mentioned
14 one specific guide in particular.

15 MS. EFFENDI: And, Mr. Commissioner, I thought that
16 maybe we could have that pulled up, identified
17 by Ms. Wood-Tweel, and marked as an exhibit just
18 so that your record is complete.

19 And you will find that document, Madam
20 Registrar, at CPABC 8. I'm not mentioning all
21 the zeros. I hope that's okay. And this
22 document is a bit misleading because obviously
23 the first page deals with the alert. But if you
24 scroll down, Madam Registrar, to actually page 5
25 of that PDF. And then I invite you, Madam

- 1 Registrar, just to scroll a bit further so that
2 Ms. Wood-Tweel can see which edition of the
3 guide this is. If you keep going. Here.
4 There's a reference here.
- 5 Q Yeah, I believe maybe on this page,
6 Ms. Wood-Tweel, there's a reference to the date.
7 A (MWT) 2008.
- 8 Q Exactly.
- 9 A (MWT) 2008. Yes.
- 10 Q And is that the guide you were referring to
11 earlier when speaking to Mr. McGowan?
- 12 A (MWT) Yes. This would've been the previous
13 guide in a legacy body to the 2014 guide, so it
14 was the prior version, if you will.
- 15 Q Correct.
- 16 MS. EFFENDI: Then if you can just scroll down, Madam
17 Registrar, to page 8 of the PDF.
- 18 Q You also mention, Ms. Wood-Tweel, reference to
19 an original guide in 2002. And I see a
20 reference of that in a bottom paragraph. Is
21 that what you had in mind when you speaking with
22 Mr. McGowan?
- 23 A (MWT) Yes, it was. And also I believe it's in
24 the body of this where it also makes reference
25 to the fact that the prior committees had stood

1 that were involved in the development of that
2 2002 guide, as an example.

3 Q Okay. Thank you very much, Ms. Wood-Tweel.

4 MS. EFFENDI: Mr. Commissioner, I'd ask that that be
5 marked as the next exhibit.

6 THE COMMISSIONER: Very well.

7 THE REGISTRAR: Exhibit 409, Mr. Commissioner.

8 **EXHIBIT 409: CPA Canada Alert - Proceeds of**
9 **Crime (Money Laundering) and Terrorist**
10 **Financing - Know your Obligations, July 2015**

11 THE COMMISSIONER: Thank you.

12 MS. EFFENDI: Thank you.

13 Q You also discussed, Ms. Wood-Tweel, with
14 Mr. McGowan the issue of the status of the
15 current --

16 We can bring that down, Madam Registrar.
17 This document is no longer necessary.

18 But you also discussed the issue of the
19 status of the current 2014 guide and you made
20 reference to the fact that there was a process
21 that had been engaged by CPA Canada with respect
22 to issuing a 2021 guide as I understood you to
23 say. I just want to understand clearly your
24 evidence in terms of what was the impetus for
25 updating the 2014 guide?

1 A (MWT) Well, very clearly the impetus is the
2 regulatory changes that have occurred with
3 respect to the *PCMLTFA* which introduced changes
4 in the regime at general but also introduced
5 changes that are specific to chartered
6 professional accountants and making sure that
7 there will be awareness of those changes.

8 Q And maybe to ask you a more direct question.
9 Was any -- was the initiative to update the 2014
10 guide, had it anything to do with this
11 commission?

12 A (MWT) Oh, no. No, no. No, this has been a
13 topic of conversation for a long time, before
14 the Cullen Commission would have been formed.
15 This is to do with updating the guide, number
16 one. It was 2014, so at what point was it right
17 to update it in terms of passage of time,
18 changes, et cetera. The other thing that I
19 think I would share in relation to this is that
20 when I was asked to be involved in these federal
21 committees as I was in 2017, what I could see
22 was our system in motion. It was very clear to
23 me walking in the door that there was a lot
24 taking place with respect to enhancing the
25 regime. I couldn't tell exactly what it was

1 going to look like, but I could certainly see
2 that there was a lot of momentum, there was a
3 lot of activity and I was about to become very
4 busy with it, which of course turned out to be
5 true.

6 But part of what I became aware of early on
7 in the process was that there was, you know, a
8 series of legislative and regulatory changes
9 that were going to be coming through. And then
10 we found out there were actually changes to
11 those regulations also being made at the same
12 time.

13 So that coupled with a style change, as I
14 understand it, a legal style change for the
15 regulations which was pursuant to the federal
16 government's justice department, there were
17 delays in getting those regulations actually to
18 the point of being fully finished and complete
19 and here you go, and that was 2019. And so at
20 the end of 2019 we had a set of regulations we
21 could start to work with with respect to
22 revising the guide. But only to be then
23 supplanted by the fact that we actually had
24 amendments to the amendments that came out in
25 very early 2020. And we then had to reply in a

1 reference, you know, submission to the federal
2 government, but I noted from the background
3 report that it was also reference to educational
4 efforts and publications.

5 So let me start maybe with could you explain
6 to the Commissioner what is CPAC's mandate in
7 terms of thought leadership, guidance that it
8 might provide to the profession?

9 A (MWT) Right. So we have obviously a role with
10 respect to the public interest to make sure that
11 our members are aware of the issues that are
12 relevant to the work that they do. So we work
13 very hard to provide information that not only
14 informs them but also supports their work. And
15 that could be done through research, it could be
16 done through issuing guidance. It can be by
17 creating awareness or by simply informing or
18 intriguing.

19 Part of the information that we have
20 produced over the last couple of years has been
21 a combination of things. It certainly has been
22 meant to build awareness. It's also been meant
23 to intrigue so that people are looking for more
24 information to determine how this might affect
25 them and it's also been to support them as they

1 understand that there are changes coming and
2 that they will need to be aware of them in their
3 practices with respect to their clients.

4 Q And looking at the background report --

5 MS. EFFENDI: And I am happy for us to pull it,
6 Mr. Commissioner, if that is of assistance.
7 That's exhibit 406, Madam Registrar.

8 Q I noted that starting at -- I believe it's at
9 paragraph 11, 12 and 13. If you can scroll to
10 that, Madam Registrar. That's at page 6 of the
11 PDF.

12 I see that here we have, I guess, examples
13 at 11, 12 and 13 of presentations, webinars that
14 CPA Canada has been involved in. And I don't
15 necessarily want you to walk us into all the
16 granular details of this, but can you generally
17 tell us what these educational sessions were
18 about.

19 A (MWT) Yes. The one that was in February 2019
20 was quite unique in terms of how it was done.
21 It was a panel presentation by a collection of
22 individuals that had knowledge around anti-money
23 laundering and the issues the profession faces
24 with respect to whistle-blowing, new
25 legislation, et cetera. And we got together and

1 talked about the issues that were confronting
2 the country, they were confronting the
3 profession. New developments like beneficial
4 ownership, new legislation bit by bit coming
5 through in Quebec regarding whistle-blowing in a
6 variety of different ways about the elderly,
7 about public contracts, et cetera.

8 And we put that into a panel to basically
9 educate and to inform the CEOs, leaders from
10 across the country as well as the governance
11 leaders from across the country who convene
12 twice a year to hear about topics of interest
13 and import. And this was one that we certainly
14 with the provincial bodies had identified would
15 create interest. That then of course helps them
16 think about priorities as they go back to their
17 home jurisdictions.

18 Q That's helpful. Thank you. And I also see that
19 you have given a presentation about, I guess,
20 money laundering -- sorry, about anti-money
21 laundering efforts. Do you recall at CPA
22 Saskatchewan --

23 MS. EFFENDI: I think that's referenced at
24 paragraph 13, if you can just scroll down, Madam
25 Registrar.

1 A (MWT) Yes. Okay. Yes, I did, and that was at
2 the invitation of CPA Saskatchewan. And it was
3 to provide an update essentially of the
4 anti-money laundering and terrorist financing
5 regime and the happenings and also to speak to
6 the implications COVID. This was certainly at a
7 time when we know that COVID had upended many
8 things in the world, and not the least of which
9 was the AML regimes around the globe.

10 So it was particularly interesting. It was
11 done on one of these platforms. And what I
12 found from it which was very encouraging to me
13 was that I really liked the questions that the
14 members were asking. And the questions that I
15 thought were sort of very useful was the fact
16 that they were coming from practitioners but
17 they were also coming from members in industry.
18 And they wanted to know how they could become
19 involved to assist with respect to resisting the
20 potential for money laundering to take place in
21 this country.

22 So I thought it was an experiment on a new
23 platform, if you will during a COVID time, but
24 it really was quite informative to me as to the
25 information that they found useful.

1 MS. EFFENDI: Thank you. If we could just, since
2 we're here scroll down, Madam Registrar, to
3 paragraph 14.

4 Q I note that in the background report prepared by
5 CPA Canada there's an extensive list of articles
6 that were published by CPA Canada either in
7 its -- and I'll come to it in a moment -- in its
8 magazine called *Pivot* or in other media, and I
9 counted the about 23 articles.

10 And can you explain to us what is generally
11 the purpose of publishing these types of
12 articles? I think you touched upon it just a
13 few minutes ago, but just so that it's clear for
14 the Commissioner.

15 A (MWT) Yeah, I think the three words that would
16 explain it is that *Pivot*, it provides insight,
17 it intrigues and it informs. So it is a
18 publication that covers a wide variety of
19 business and other issues that are relevant to
20 the CPA profession. Some would entirely be
21 about piquing our interest in subject matters to
22 learn more. Others are flagging the fact that
23 changes are coming. So we made, you know,
24 particular use of it with respect to the
25 burgeoning changes we could see with respect to

1 beneficial ownership as it relates to the *Canada*
2 *Business Corporation Act* and the relevance of
3 that to CPAs as practitioners or as individuals
4 that work in *Canada Business Corporations Act*
5 clients or corporations. So we use it to, as I
6 say, inform.

7 It's not, however, intended to be a
8 technical journal. It's intend to provide the
9 information that opens up the horizons for the
10 CPA profession so that we're seeing the issues
11 in front of us and that it gives us information
12 to inform and to provide insights.

13 Q And I guess -- would it be fair to say -- you
14 mentioned a few times, pique the interest of the
15 CPA. Would it be fair to say that you're hoping
16 that, you know, a CPA that reads these articles
17 would be piqued enough to go and look at other
18 tools that might be published by CPA Canada in
19 term of understanding their obligation as it
20 relates to AML?

21 A (MWT) Right. So I think the writing style,
22 number 1, allows us to do that. It's written in
23 a way that it's a very engaging style and it
24 does sort of put forward questions. It puts
25 forward points of view. It refers to other

1 reference to one of the articles and I think,
2 Ms. Wood-Tweel, I wanted just to give you an
3 opportunity to speak to that article.

4 MS. EFFENDI: So before we do that, Madam Registrar,
5 can we pull up CPAC33. And if we could go to
6 page 7 of that document.

7 And, Mr. Commissioner, this is an article
8 from the *Pivot* magazine that's actually
9 referenced in the background report we were just
10 looking at. And it's entitled "What It Takes to
11 Clean Up Dirty Money."

12 THE REGISTRAR: Sorry, Ms. Effendi, did you say
13 CPABC33?

14 MS. EFFENDI: CPAC33.

15 THE REGISTRAR: I don't have 33.

16 THE COMMISSIONER: Is it 34?

17 THE REGISTRAR: I have a *Pivot* magazine, CPAC34.
18 I'll bring it up.

19 MS. EFFENDI: It's not that, but that's okay. It's
20 not a big deal. I can just --

21 THE WITNESS: (JH) But that's a wonderful article you
22 just put up, Madam Registrar.

23 MS. EFFENDI: Indeed it is, Dr. Hernandez. I see
24 that you're the author of that.

25 But not to worry, Madam Registrar. We don't

1 need it for me to ask the question to
2 Ms. Wood-Tweel.

3 Q On Monday Mr. McGuire testified that he actually
4 had read a quote in one of the articles and that
5 he was surprised and troubled by the quote that
6 he had read in one of the *Pivot* magazine, and
7 it's this one that I'm referring to that is
8 entitled "What It Takes to Clean Up Dirty
9 Money." And what he quoted actually was
10 something that you, Ms. Wood-Tweel, had been
11 quoted in the article as saying.

12 And I'm going to read it, Mr. Commissioner.

13 And I would ask you, Ms. Wood-Tweel, just to
14 maybe explain to us what you meant by that. And
15 you're quoted as saying:

16 "It is becoming increasingly complex in
17 Canada for CPAs to try to do the right
18 thing if they don't know where to report,
19 how to report and what protection will be
20 available, especially when there are so
21 many different pieces of legislation
22 speaking to the issue of reporting.

23 There needs to be a go-to framework -
24 or, in fact, a national whistle-blowing
25 policy. The policy would apply to many

1 other areas, whether it is environmental
2 whistle-blowing or occupational health and
3 safety. In a federated model like
4 Canada's, it's all over the place, and
5 it's growing with each piece of
6 legislation that is introduced."

7 And the piece that Mr. McGuire was troubled by,
8 Ms. Wood-Tweel, was really the first part of
9 that where you mentioned that it's increasingly
10 complex for CPA's to try to do the right thing.
11 Can you explain to the Commissioner what you
12 meant by that.

13 A (MWT) Yes, I can. It relates to the information
14 that was in the paragraph immediately preceding
15 it where the CEO of CPA Quebec, Geneviève
16 Mottard, was actually describing the discrete
17 pieces of legislation that had been introduced
18 into the province of Quebec regarding some
19 whistle-blowing related provisions.

20 And these are discrete pieces of legislation
21 in respect of specific areas. So there is one
22 that deals with the elderly, there are some that
23 deal with public sector contracts and things
24 like that.

25 The issue is is that as I've been studying

1 the information about how Canada compares to
2 some other countries, one of the things that has
3 occurred to me is that we are lacking, in my
4 opinion, a significant legislative tool. And if
5 you look at the UK as an example, you find an
6 act like the *Public Interest Disclosure Act* that
7 applies to public and private sector. It
8 applies to volunteers. It encourages the type
9 of speakup culture that we envision could be
10 relevant for the *PCMLTFA* and corruption more
11 broadly.

12 One of the things that the *Public Interest*
13 *Disclosure Act* does in the UK which I thought
14 was very valuable is it actually assembles in
15 one place all of the channels by which you can
16 report in relation to the issues that you may be
17 facing or want to report on. In Canada I don't
18 believe we have such a thing. So as a Canadian
19 standing on Main Street, if I know something
20 about money laundering, do I know the *PCMLTFA*?
21 I'm doubtful that most Canadians do. Do I know
22 the right environmental piece of legislation
23 under a province that might exist as to how I
24 access it? And it goes on from there. You've
25 got securities bodies that in one province will

1 pay an award with respect to information,
2 whistle-blowing, and the next piece of
3 legislation introduced by a province in Canada
4 says there's no award. We are becoming
5 unwieldy, in my opinion, in terms of where these
6 pieces of legislation are located and the
7 differences amongst them.

8 And if I get very specific to the *PCMLTFA*,
9 what we have just seen in the United States is
10 actually the incorporation of several of the
11 suggestions that we've actually been advocating
12 for. The US passed on New Year's Day a new act,
13 the *Corporate Transparency Act*, that includes
14 beneficial ownership to FinCEN, reporting to
15 FinCEN. It's not public. But it also includes
16 an enhanced whistle-blower portion in relation
17 to their system, and it also includes a degree
18 of information sharing amongst relevant
19 participants in the regime.

20 These things are significant enhancements
21 that United States has just been doing, and
22 those are actually the types of things that
23 we're talking about when we speak to
24 whistle-blowing as an example. It's a much
25 bigger and broader concept. It's not a

1 whistle-blower hotline. It's not restricted to
2 the *PCMLTFA*. It is a clear and marked
3 deficiency in the legislative framework in
4 Canada. And I'm happy to say I am not the only
5 person that believes it because there's a report
6 out of the University of Ottawa that actually
7 concluded the same types of things that I
8 concluded, and in fact they also noted the
9 *Public Interest Disclosure Act* as being one of
10 the best practices that they could find.

11 Q Thank you, Ms. Wood-Tweel. I wanted now to move
12 actually just to clarify because -- and we can
13 bring this down, Madam Registrar. We no longer
14 need this document.

15 But I thought that both of you had mentioned
16 at various times -- I think, Ms. Wood-Tweel, at
17 one point you said -- you mentioned a public
18 trust committee. And I believe that you,
19 Dr. Hernandez, at one point mentioned the public
20 trust. And so -- and I noticed that when we
21 were looking at one of the documents attached to
22 the background report -- that's the March 31st,
23 2017 letter, Mr. Commissioner -- that
24 Dr. Hernandez explained that described the
25 blueprint and the various recommendation there's

1 again reference to this public trust committee.
2 So I think it might be helpful for
3 Mr. Commissioner to -- what is this public trust
4 committee that is being referred to,
5 Ms. Wood-Tweel, and if you could just describe
6 that to us.

7 MS. EFFENDI: It might be helpful just to assist you
8 and make things go a bit more quickly -- Madam
9 Registrar, if we could pull that document. So
10 that would be exhibit 406 and it would be the
11 appendix V and would be page 395.

12 If we can just scroll to the last
13 paragraph of that first page, that is where I
14 noted the reference to the public trust
15 committee. And it refers to it as the committee
16 that:

17 "Oversees the ethical standards and
18 self-regulatory processes of the
19 profession, serving to protect its
20 integrity while maintaining public
21 confidence and trust."

22 Q And so maybe I could start with you,
23 Ms. Wood-Tweel. First of all, do you sit on
24 this committee?

25 A (MWT) Yes, I do. And I'm secretary to the

1 public trust committee.

2 Q Okay. So can -- is this an accurate description
3 of this committee?

4 A (MWT) Yes, it is.

5 Q Okay.

6 A And to say it in more laypersons terms, it's a
7 coordinating forum.

8 Q For what? Can be elaborate a bit on that?

9 A (MWT) Yeah, the coordinating forum for the
10 efforts of the provincial bodies to come
11 together and to agree on -- when we talk about
12 harmonization to get to as harmonized a place as
13 possible, to share best practices, to learn from
14 each other with respect to experiences
15 et cetera. It is a forum in which we look to,
16 as it states, protect the integrity of the
17 profession by doing the right thing and also
18 maintaining the public confidence by moving the
19 profession in lockstep with itself, as opposed a
20 federated model having differences appearing at
21 borders. That's our effort as to maintaining as
22 much harmonization as we can.

23 Q And what role, if any, does the public trust
24 committee have as it relates to anti-money
25 laundering efforts?

1 A (MWT) Well, the public -- in relation to looking
2 at ethical standards and self-regulatory
3 processes, you know, one of the ways that we do
4 that is obviously not by doing it in a vacuum.
5 We are definitely looking at the environment.
6 We watch the environment as it changes. We
7 watch issues as they are arising or changing.
8 The information associated with this anti-money
9 laundering -- the committees, the information
10 from FATF, from the 2016 report, et cetera, are
11 all pieces of information that are heard at the
12 public trust committee with the insight that we
13 then need to consider that information relative
14 to the processes of the profession. And the
15 code.

16 Q Thank you, Ms. Wood-Tweel. I'd like now to move
17 on to a different topic, and that's the report
18 by Mr. McGuire and his testimony.

19 MS. EFFENDI: By the way, Mr. Commissioner, I note
20 that I have 4 minutes to go, I think, on my
21 time. I think I'm going to be a bit longer.
22 I'm hoping that I won't need more than an
23 additional 10, 15 minutes, but I would ask your
24 indulgence, if I may.

25 THE COMMISSIONER: I think that's fine, Ms. Effendi.

1 We're well within the time, so I am certainly
2 prepared to indulge you.

3 MS. EFFENDI: Thank you very much.

4 Q So one of the things that is reference in Mr. --
5 first of all, I should ask both of you, did both
6 of you read the McGuire report?

7 A (MWT) Yes.

8 (JH) Yes, I did.

9 Q Okay. One of the things that we heard actually
10 Mr. McGuire testify about on Monday and it's
11 cited in his report, he referenced a number of
12 cases which he found -- which he asserted
13 yielded anecdotal instances of accountants
14 either engaging in money laundering or somehow
15 facilitating money laundering and one of the
16 cases he discussed on Monday with my colleague
17 Mr. Pratte is the *Neilson* case, and I believe
18 Mr. McGuire testified that he wasn't aware of
19 the status of Mr. Neilson within the profession.

20 Maybe -- that question is probably better
21 asked of you, Ms. Wood-Tweel. Are you aware of
22 what the status is of Mr. Neilson in the
23 profession?

24 A (MWT) Yes. Mr. Neilson's CPA registration was
25 cancelled in 2016.

1 Q And do you know why that was?

2 A (MWT) It was in relation to specific complaints
3 that had been received by CPA Alberta and some
4 were in relation to different things. There
5 were more than one complaint, but it's the --
6 and I think -- I'm trying to remember the
7 publication of it, but it was in relation to
8 things that he had done or associated himself
9 with false information and that was the nature
10 of the decision that was made out of CPA
11 Alberta.

12 Q Okay. Thank you for clarifying that. And I
13 know that Mr. McGuire made several
14 recommendations in his report, and this might be
15 a good time just to deal with a couple of them.
16 One of the recommendations in Mr. McGuire's
17 report -- and we can bring this document down,
18 Madam Registrar -- is that he speaks about the
19 inclusion of non-regulated accountants in the
20 Canadian AML regime.

21 And so, Ms. Wood-Tweel, does CPA Canada have
22 a position with respect to that recommendation?

23 A (MWT) Yes, I think we would be supportive of
24 that type of recommendation and we say that
25 because we recognize that accountants who are

1 not regulated that the term is not protected in
2 Canada. And that causes a problem both for the
3 public and also in relation to statutes like the
4 *PCMLTFA*. Because you're knowing that
5 information is being handled in accounting
6 services are being provided by individuals that
7 are not supervised or regulated. So we think
8 that that would be an enhancement to the overall
9 regime.

10 And while I'm perhaps at it, Ms. Effendi, if
11 I might add.

12 Q Yes.

13 A (MWT) In the UK it's a very similar situation.
14 So "accountant" is also not a protected term in
15 the UK. It is not like "lawyer" or "doctor."
16 And in the UK unregulated accountants are
17 subject to the regime and they are registered
18 through the HMRC which is the -- Her Majesty's
19 Revenue and Customs.

20 Q Thank you. Another recommendation that is
21 mentioned by Mr. McGuire and he elaborated on on
22 Monday was with respect to improving the sharing
23 of information by FINTRAC and other
24 stakeholders. Again, does CPA Canada have a
25 position with respect to that recommendation?

1 A (MWT) So I think we believe that there's
2 information sharing that could be improved
3 within regime participants that would enhance
4 and advance the objectives of the *PCMLTFA* if
5 more sharing were possible. So one of the
6 things that we were very happy to see in the
7 fall economic statement was the indication that
8 the government will be looking at FINTRAC's
9 abilities to share information and/or to ask for
10 information. We think that's a very good thing.

11 We also believe that regime participants --
12 and if I can again with respect use an example
13 of bank A and bank B -- it's my belief they need
14 to be able to talk to each other and to be able
15 to get to the root of issues that they're
16 seeing. If they are somehow kept apart because
17 of, for example, privacy laws, et cetera, the
18 deficiency there is that the people with the
19 illicit objectives can actually play on those
20 kinds of protections of privacy rights and to
21 the detriment of the system and the detriment of
22 the Canadian society.

23 So we are certainly in favour of information
24 sharing that becomes enhanced within the
25 participation of those regime participants, and

1 it doesn't have to be, I think, you know, a full
2 out on board, all information on the table,
3 everybody sees everything. I think it can be
4 done in a way where you identify who needs to
5 know information to advance the regime's
6 purposes. That's the strategic way to do it and
7 it's the way that actually respects, I think,
8 best the privacy rights of Canadians.

9 Q Dr. Hernandez, did you have something to add?

10 A (JH) No, I think that that was well said.

11 Q Okay. Now, moving on, I just wanted to ask a
12 few questions about the current regime just
13 following up on the question that you were asked
14 and some of the information that the commission
15 has heard as well in the last couple of days.

16 We heard that the issue or the topic of --
17 and the activity with respect to audits, review
18 and compilation engagement services, is not a
19 triggering activity and is not covered under the
20 current regime. And I guess I was wondering,
21 Ms. Wood-Tweel, in your experience and given
22 your involvement and interaction with the
23 government, whether you had an understanding as
24 to why the legislator may have decided to not
25 subject that activity performed by CPAs to the

1 legislation?

2 A Yes. And I've given it a lot of thought, and my
3 research as well as my understanding and
4 thinking about it is that the policy intent of
5 the legislation relative to accountants was in
6 relation to financial intermediation. So when
7 one performs an audit or a review or a
8 compilation there's not an interaction with the
9 financial system. That is the principal reason,
10 in my view, that it was exempted.

11 Q And do you have any views with respect to the
12 recommendation by Mr. McGuire that an amendment
13 be made to the legislation to subject audit
14 review and compilation engagement to the regime?

15 A (MWT) I think the, again, policy intent of the
16 legislation I accept and endorse as being the
17 attraction as to the financial intermediation by
18 an accountant is where the risk occurs. The
19 performance of an audit does not involve the
20 financial system. I, on its face, am not in
21 agreement that the scope of audit should be
22 included into the legislation. Audit is a very
23 highly regulated process in Canada. It is
24 subject not only to the requirements of the
25 profession, but it's subject also, depending on

1 the engagement, to the Canada Public
2 Accountability Board, CPAB, as well as PCAOB in
3 the United States.

4 And i think that when we look at the
5 standards that are involved in the Canadian
6 regime, those are very relevant. So I take note
7 when I look at the FATF RBA to accountants, one
8 of the things that it says that the purpose of
9 the FATF recommendations as they are related to
10 accountants is that accountants should not be
11 assisting criminals and they should not be
12 enabling criminal activity. That is the intent
13 of what FATF's recommendations are related to
14 the accountants. When it speaks to something
15 like audit, it says that the requirements in a
16 country should be respective of the controls
17 that are in that country, namely the ethics code
18 of the accounting profession in that country as
19 well as the regulation of that country and the
20 standards. And in Canada we have regulation of
21 the audit field and review field. And when we
22 look at standards, we do have independent
23 standard setting-boards in Canada that set both
24 accounting and audit standards.

25 So this is one of the places where, again

1 through my thought, the issue of FATF is that
2 FATF is the establishing what should be and are
3 global recommendations and standards. You then
4 have to stand on Main Street in various
5 countries to understand how those are
6 interpreted. When you look at a country like
7 Brazil versus the United States versus the UK,
8 there are differences. There are differences in
9 legislation, regulation, business practices.
10 They vary country by country.

11 So when FATF establishes a recommendation,
12 it is up to the country owning the regime to
13 bring it home and make sense of it relative to
14 the context of the legislative and regulatory
15 functioning that we have in this country. I
16 think that's what Canada has done and I endorse
17 the exemption with respect to audits.

18 Q Okay. I'd like to talk to you a bit about -- I
19 think it's somewhat related to this -- the
20 discussion this morning with Mr. McGowan
21 surrounding duty of confidentiality. And I
22 think you explained kind of the interaction
23 between the duty of confidentiality and kind of
24 the role of the accountants, what an accountant
25 could do -- and I use "accountant," but I mean a

1 CPA could do in the event they discover a
2 problem.

3 And I believe also Dr. Hernandez spoke to
4 that that issue, but I wanted to clarify. One
5 of the things you mentioned was, you know, that
6 a CPA would go and get legal advice in a
7 circumstance where, you know, he'd be having to
8 juggle all of these different obligations. But
9 one thing that wasn't clear in my mind, I
10 suppose, after your testimony was whether it
11 would be a possible option for a CPA, you know,
12 on getting legal advice that they would actually
13 go ahead and disclose the problem they have
14 identified to the authorities notwithstanding
15 their duty of confidentiality. Like, is that an
16 option?

17 A (MWT) I suppose everybody has personal options
18 as to their decisions. I think part of what I
19 have to say in relation to when I was responding
20 to Mr. McGowan earlier today is that his
21 question was, in my view as I heard it, premised
22 as an individual as opposed to, for example, an
23 audit. And so this shows the dynamic of when
24 you have professional standards and auditing
25 standards to pay attention to.

1 If it were an audit regime-related question
2 and audit was underway and information was
3 becoming apparent even -- or known or suspected
4 information around non-compliance with laws and
5 regulations, the auditor then has
6 responsibilities under the Canadian audit
7 standards. And so there's three places within
8 the standards that it speaks directly to money
9 laundering as an issue and in relation to those
10 responsibilities.

11 And one of the primary responsibilities in
12 the Canadian audit standards is an escalation
13 process. It's a process of understanding
14 there's an issue, then trying to find out more
15 information about it so that you have some
16 tangible information in your hands as an auditor
17 to present. And then you look to who you are
18 going to contact relative to that organization.
19 And sometimes it could be management. It could
20 also be those charged with governance like an
21 audit committee or a board of directors.

22 Much of this is going to be specific to the
23 circumstance in relation to if there is any
24 involvement of any of those parties, and also in
25 specific reference to what the law says about

1 not tipping off individuals relative to perhaps
2 an ongoing investigation. So that's where we
3 say very clearly that even as an auditor, or in
4 the case of what I thought Mr. McGowan might
5 have been asking about with an individual, legal
6 advice becomes extremely important. Because the
7 repercussions are it could mean that the auditor
8 can't complete their work; it could mean that
9 they would issue a report without reservations;
10 it could mean that the report would actually be
11 very serious in terms of what the findings were
12 and that could be issued as the report on a
13 corporate entity. That may affect, in fact,
14 obviously, their standing if they happen to be,
15 for example, a public entity, a publicly-traded
16 corporation. There may be a resignation
17 involve. It becomes a very complex scenario to
18 try and analyze and these are the things that
19 the auditor would be faced with.

20 Ultimately your question is can they resign,
21 and my answer would be -- or would report, and
22 my answer would be is that the code of ethics is
23 designed to say that you have confidentiality to
24 your client. If an individual were to report
25 because they felt that they had overriding

1 public interest reasons to do so, I think it's
2 fair to say the chips will fall where they lay,
3 and the answer will be there could be civil
4 liability results that could come out of it.
5 They could be at risk with the profession. What
6 they need within the confidentiality out is the
7 legal and lawful authority to be able to
8 disclose the information or in fact the consent
9 of the client.

10 Q And related to that, I think I heard you mention
11 a few times -- and I know it by the acronym, so
12 I'm going to ask you to help me out here. But I
13 think what I referred to a NOCLAR,
14 non-compliance --

15 A Right.

16 Q Can you first of all explain to the Commissioner
17 what NOCLAR is.

18 A (MWT) Right. Non-compliance is non-compliance
19 with laws and regulations. It is an
20 international standard that was introduced into
21 the International Ethics Standards Board of
22 Accountants code of ethics.

23 And NOCLAR is essentially a framework by
24 which an accountant, whether an accountant in
25 public practice or otherwise, can move through

1 the various levels and stages of analyzing what
2 their steps might be in response to known or
3 suspected non-compliance with laws and
4 regulations. In fact NOCLAR had money
5 laundering on its mind at its birth because one
6 of the focuses of the IESBA was that in some
7 countries in the world there was a lack of an
8 anti-money laundering system or and anti-money
9 laundering system that functions well. So
10 NOCLAR was in fact designed to help with that
11 and other broader categories of corruption.

12 One of the issues that we face in Canada is
13 because we have this overall lack of
14 legislative, you know, infrastructure, as I call
15 it, related to things like public interest
16 disclosure acts and whistle-blowing regimes with
17 protections. It is difficult for us to envision
18 how NOCLAR will be implemented in Canada as a
19 national standard without inadvertent and
20 probably severe risk to anyone who might take up
21 the call. And that's exactly, I think, what
22 you've also seen under the *PCMLTFA*. If we look
23 at the individuals who acted as whistle-blowers
24 in BC, they have suffered the exact same
25 consequences that whistle-blowers around the

1 world do. They don't fare well. And I think
2 Canada in order to enable professions like ours
3 and even members of the public to speak up, that
4 speakup culture, I think we have to be prepared
5 to put the money and the protection where our
6 mouths are and to ask and to protect those
7 people and support them in making those calls
8 when they are able to whistle-blow.

9 Q Okay. Thank you for that. I'd like now to talk
10 to you about STRs just very briefly. You spoke
11 to Mr. McGowan with respect to your views as it
12 relates to the few STRs that -- suspicious
13 transaction reports that have been filed by the
14 accounting sector with FINTRAC. And so I'd like
15 to understand from you, because one of the
16 things the commission heard from Mr. McGuire on
17 Monday was that in his view the low number of
18 STRs was indicative of a lack of understanding
19 by the CPA's of their obligations.

20 And so what's your view about that?

21 A (MWT) Well, I think he can identify as well as
22 other people can identify or conjecture as to
23 what the reasons might be around the numbers of
24 what STRs are. My own concern about what the
25 numbers of STRs are is to ensure that we have

1 done our job to enable the understanding and the
2 awareness of the requirements in the legislation
3 and also to be able to recognize what are these
4 situations that in fact may be subject to
5 reporting relative to the legislation.

6 Q Okay. Thank you. And one of the things that
7 the commission actually has heard, and this was
8 alluded to by Mr. McGuire, was evidence with
9 respect to STRs by the accounting sector in the
10 UK. And I believe what Mr. McGuire testified on
11 Monday -- and I'm just going to remind you of
12 that in case you weren't listening to his
13 testimony and get your views about it. He
14 testified, and I quote:

15 "Between 2002 and 2017 their STRs number
16 rose from 134 to nearly 10,000 in a year
17 for the accounting sector. The number now
18 hovers around 5,000 a year, but it's a far
19 cry from the zero that we've seen in many
20 of the years since the requirements apply
21 to accountants in Canada. This supports
22 the idea that accountants are observing --
23 in the parts of the world where they're
24 receiving significant outreach and
25 enforcement oversight, they are observing

1 these crimes and these transactions and
2 are reporting them and it's leading to
3 certainly great outcomes in the UK."

4 And let me pause here and put another piece of
5 evidence to you, Ms. Wood-Tweel, and get your
6 reaction.

7 The commission has also heard from Professor
8 Levi that between April 2018 and March 2019
9 there was 5,055 SARs, and I just wanted to pause
10 at that. And so with these two pieces of
11 information that I've just provided you, let me
12 ask you a series of questions.

13 First of all, what is the difference between
14 STRs and an SARs?

15 A (MWT) So Canada's regime is built on suspicious
16 transaction reports and that includes an actual
17 transaction occurring. In the UK the system is
18 built on a suspicious activity report. In other
19 words, no transaction may occur but
20 circumstances may be observed, seen or arise
21 where suspicion is formed to achieve reasonable
22 grounds that a report is made as a SAR. One of
23 the ways in which it can be explained is that an
24 STR would be a transaction occurring in England
25 or in Wales or what have you, they may look at

1 the possessions of an individual and determine
2 that the possessions were inconsistent with the
3 overall income of the individual and notice that
4 accounts were off inside of an accounting
5 function. Put those things all together, no
6 transaction has been seen but together the
7 information seems to be leading in a direction
8 that there's something happening and it is
9 suspicious and it thereby gets reported.

10 So if I were to compare the nature of the
11 two regimes and the specific information that is
12 flowing into the financial intelligence unit, I
13 would say that the UK has a broader funnel. I
14 look at it as a funnel and say how much is
15 flowing into the funnel. I think you've got a
16 broader perspective of reports flowing into the
17 UK.

18 Now, interestingly enough the UK has an
19 issue now because they do have over half
20 a million of these suspicious activity reports
21 to deal with per year and they've had an ongoing
22 program since 2018 to actually review and to
23 revise the SAR system for effectiveness and
24 efficiency because they can't deal with the
25 incremental volume that is escalating each year.

1 So it shows a different style of regime and
2 these are, you know, in different parts of the
3 world. You can look in Europe and find
4 countries where one country will have immense
5 numbers of reporting, in the millions, and the
6 country right next door to it may have a very
7 much different number and smaller. And it's the
8 way the regime is actually built and designed
9 and the way it tries to capture information for
10 the system.

11 Q To your knowledge, Ms. Wood-Tweel, has the
12 increase in the number of SARs in the UK led to
13 more prosecution with respect to money
14 laundering?

15 A (MWT) I'm not aware of exact numbers on
16 prosecution, but what I have looked at is the UK
17 national inherent risk assessment for 2020. And
18 I take note that one of the -- or actually two
19 of the main objectives for the coming year with
20 respect to the UK is to improve prosecution and
21 to improve the enablement of law enforcement to
22 succeed with respect to asset seizures,
23 et cetera, in the UK. So what I would glean
24 from that is and also one of the objectives is
25 to improve the SARs system to make it better and

1 more efficient and more effective.

2 What I glean from that is that the UK is
3 doing what it's been doing all along. It's
4 improving. So it's looking at what its
5 experience is and saying, okay, is this getting
6 us what we need, and if it isn't, what can we do
7 next to improve it.

8 They're also doing the review and the
9 enhancement of Companies House which they
10 started and now need the enhancements to for it
11 to be as beneficial to them as possible as well.

12 Q And I guess one last question on that. Like,
13 has -- to your knowledge has the SAR system in
14 the UK led to deterrence with respect to money
15 laundering?

16 A (MWT) Well, I think they would say that they've
17 had information that has flowed into the regime
18 that has enabled law enforcement to learn more.
19 So what I have done, then, is looked at that and
20 said, what does that mean relative to the
21 accounting profession. And what we find is that
22 the most significant risk within the accounting
23 sector in the UK is pointing in the direction of
24 company formation and company termination. And
25 these are services in the UK that can be

1 provided within the accounting sector and
2 particularly with respect to trust and company
3 service providers, some 17,000 entities in the
4 UK or in the accounting sector providing trust
5 and company service provider work. And that
6 includes actual formation, it includes
7 termination, it includes trusts, it includes
8 partnerships, it includes cash flow, banks,
9 overseas transfers.

10 These are in-depth money-running businesses
11 that are inside the accounting profession in the
12 UK. The equivalent to that is not in Canada,
13 and of course with the scope of practice
14 restricted for CPAs that we don't practice law.
15 The formation of companies, trusts,
16 partnerships, et cetera, is a legal position in
17 this country.

18 Q Thank you.

19 MS. EFFENDI: Mr. Commissioner, I realize that I'm,
20 as we would say back home in New Brunswick,
21 pushing my luck here, but I just have two more
22 questions for these witnesses, if you would
23 indulge me one -- a bit further.

24 THE COMMISSIONER: Yes, that's fine, Ms. Effendi. Go
25 ahead.

1 MS. EFFENDI: Thank you.

2 Q One of the things that was discussed, Ms.
3 Wood-Tweel and Mr. Hernandez, was the issue of
4 compliance deficiencies and the presentation
5 that was done by FINTRAC to CPA Canada's AML
6 committee back in March 2015.

7 And, Mr. Hernandez, one of the things that
8 you indicated was that you thought you had seen
9 somewhere the fact that FINTRAC had indicated to
10 the committee that the profession was low risk.

11 MS. EFFENDI: And I just wanted for the record,
12 Mr. Commissioner, to have Mr. Hernandez identify
13 where I think he might have seen that.

14 And so I realize, Madam Registrar, that this
15 is something that you may not have handy, but if
16 you do, I'm looking at exhibit 395. And if you
17 go to page 3.

18 And just for the record, Mr. Commissioner,
19 these are the minutes of the CPA Canada March 4,
20 2015 meeting. And if we scroll to page 3 of
21 the minutes.

22 THE WITNESS: (JH) It says right there
23 "organizations." We passed it. A little bit
24 above, I think. Stop right there. It says:
25 "Organizations in the accounting sector

1 are generally assessed as lower risk."

2 So it wasn't low risk, it's lower risk.

3 MS. EFFENDI:

4 Q Excellent. Thank you. Thank you,
5 Mr. Hernandez. And on the issue of that
6 presentation and what followed --
7 Ms. Wood-Tweel, you explained to Mr. McGowan
8 that what followed that presentation was an
9 alert that was issued by CPA Canada to the
10 profession. And I guess I wanted to get from
11 you a better understanding of what were the
12 efforts made by CPA Canada with respect to this
13 alert and also communicating this alert to the
14 profession, you know, after. And so -- because
15 that wasn't clear to me.

16 A Right.

17 Q Can you describe that to the Commissioner.

18 A (MWT) Right. So the committee had done its good
19 work and it created the alert, and then the
20 alert was in fact taken by CPA Canada and shared
21 across the country in a number of different
22 ways. It was shared obviously as an alert
23 direct to members, direct to actual members and
24 through different channels. So members might
25 have received it more than once, in fact they

1 might have seen it multiple times, but they
2 definitely received it once. And as well it was
3 provided to the chief executive officers of the
4 provincial bodies in the country because we
5 do -- through the process of summarizing the
6 leadership, thought work that we do in the
7 profession, we share the products. And this
8 would have been one of them, so that was one of
9 the other areas that we shared it. And it was
10 also shared as well for purposes of
11 disseminating through the provincial bodies to
12 their member newsletters and such. So it would
13 span right across the country as it was intended
14 to and certainly we can see that it was.

15 Q Okay. Thank you. And one of the things that
16 you indicated to Mr. McGowan was that FINTRAC
17 did not come back after this alert to inform CPA
18 Canada with respect to the level of compliance.
19 Did I get that right?

20 A (MWT) Correct.

21 Q And I guess just for clarity, FINTRAC didn't
22 come back and indicate any concern either, did
23 they, about the level of compliance with the
24 profession?

25 A (MWT) That's correct.

José Hernandez (for the commission)
Michele Wood-Tweel (for the commission)
Exam by Ms. Effendi
Questions by the Commissioner

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1 MS. EFFENDI: Okay. Mr. Commissioner, thank you very
2 much for your indulgence. These are all my
3 questions.

4 THE COMMISSIONER: Thank you, Ms. Effendi.

5 Anything arising Mr. Rauch-Davis.

6 MR. Rauch-DAVIS: No, thank you.

7 THE COMMISSIONER: Mr. McGowan?

8 MR. MCGOWAN: No, thank you, Mr. Commissioner.

9 THE COMMISSIONER: All right. Thank you. I just
10 have one question to -- I guess that arises out
11 of Ms. Effendi's examination.

12 **QUESTIONS BY THE COMMISSIONER:**

13 Q Dr. Hernandez -- no, I'm sorry, Ms. Wood-Tweel,
14 there was a discussion about the fact that
15 the -- an accountant's obligation of
16 confidentiality can limit his or her ability or
17 authority to report on behaviour that may be
18 reasonably regarded as criminal in nature. And
19 I'm just wondering if CPA Canada has ever sought
20 or obtained a legal opinion about what conduct
21 by a client might fracture both the expectation
22 and the obligation of confidentiality that would
23 bind an accountant and would enable a report to
24 an appropriate authority.

25 Has anything like that of been sought by CPA

1 Canada and is that something that you would
2 regard as within its bailiwick to do?

3 A (MWT) Not in the role as CPA Canada as the body
4 in -- because it's not the regulator and it's
5 also not the body that owns a code. That's not
6 to say that it couldn't be done in the support
7 of the profession as a whole and the provincial
8 bodies.

9 Q Right.

10 A (MWT) so it could be done. I'm not sure that
11 I'm aware of anything like that that has been
12 done. I think -- I'm not sure either that I'm a
13 hundred percent understanding the nature of the
14 question that you're asking exactly and it's my
15 reason for not understanding. I think when we
16 talk about the legal authority it's clear to us
17 or clear to our understanding and certainly
18 clear to mine, that if you have a requirement to
19 report under a statute you're there. There's no
20 further permission sought. You're already able
21 to do what you need to do. The difficulty
22 occurs with respect to confidentiality is when
23 you're in the grey zone of perhaps wanting to be
24 able to say something, but you don't have a
25 client that will actually consent. And this can

1 come up in a number of different ways. So, you
2 know, they are difficult situations we have to
3 work through and they're not certainly limited
4 to illegal acts, but it does something that does
5 happen in the profession rather routinely and we
6 have to deal with it.

7 Q Right. You know, I wasn't referring to
8 situations where there was an obligation to
9 report but rather --

10 A (MWT) Where there wasn't?

11 Q Yeah, where there wasn't and the question of
12 whether or not there's authority to report
13 and/or at least an ability to report without
14 engaging adverse consequences to the accountant.

15 A (MWT) Through for, example, the civil affair
16 that may ensue afterwards; right? And I think
17 that's one of the issues that, you know, we face
18 through this as you think it through because the
19 other jeopardy for the professional which
20 presumably goes away, if you are right. So if
21 you suspect something and you breach
22 confidentiality and report it and you're right,
23 I'm assuming that the profession would not be
24 looking at that and charging you with having
25 breached your confidentiality. I'm making a big

1 assumption here because I'm not a regulator.

2 I'm just saying.

3 But the other part of it is is that what if
4 you're wrong. And so this is one of the issues
5 with suspected that we have wrestled with
6 because if you suspect something and you do
7 breach confidentiality and you are wrong, then
8 in fact you've breached your professional rules
9 and will be held to account. And we also know
10 that you've then offended your client, who
11 likely is about to take civil action against
12 you.

13 So it's not without a difficult dance that
14 we have to go through and that is why we do
15 reference the fact that whether an individual or
16 an auditor, there's a need oftentimes to each
17 reach out for legal advice to weigh these
18 various issues as we proceed through the
19 evaluation stages of what this means, the
20 information that we might have come across.

21 Q Yeah, I would imagine that in any particular
22 circumstance an accountant facing that choice
23 would want legal advice to deal with the
24 specifics of what he or she was dealing with. I
25 was just really more wondering about more a

1 general legal --

2 A (MWT) Opinion.

3 Q -- opinion about the sorts of things that could
4 invalidate or at least fracture the duty of
5 confidentiality and the expectation, but I think
6 you have answered that. So thank you very much.

7 A (MWT) I think you've given me good information.
8 Thank you.

9 (JH) And this is going back --
10 Mr. Commissioner, with your permission, going
11 back to -- you know, if we face these issues,
12 you imagine the entire public going back to
13 having a whistle-blower regime which protects
14 the individual that in good faith comes forward,
15 giving that information, allowing for an
16 exchange. And I think that is a very important
17 and effective pillar to consider.

18 THE COMMISSIONER: All right. Thank you,
19 Dr. Hernandez.

20 Any questions arising out of that?

21 Ms. Effendi?

22 MS. EFFENDI: No, Mr. Commissioner.

23 THE COMMISSIONER: Mr. McGowan.

24 MR. MCGOWAN: No, thank you.

25 THE COMMISSIONER: All right. Thank you to both

1 Dr. Hernandez and Ms. Wood-Tweel. Your evidence
2 has been very helpful in understanding not just
3 the accounting profession across Canada but its
4 intersection with the large issue of money
5 laundering and its regulation. So I'm very
6 grateful to both of you for the time you've
7 taken and the expertise that you've shared with
8 us.

9 I think we're now in a position to adjourn
10 until tomorrow morning at 9:30, Mr. McGowan.

11 MR. MCGOWAN: Yes, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 THE REGISTRAR: The hearing is adjourned until
14 January 14, 2021, at 9:30 a.m. Thank you.

15 **(WITNESSES STOOD DOWN)**

16 **(PROCEEDINGS ADJOURNED AT 12:45 P.M. TO JANUARY 14,**
17 **2021)**

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