

**Commission of Inquiry into  
Money Laundering in British Columbia**

**Public Hearing**

**Commissioner**

The Honourable Justice  
Austin Cullen

**Held at:**

Vancouver, British Columbia  
via video link

Thursday, June 4, 2020

## APPEARANCES

Brock Martland, QC Patrick McGowan Alison Latimer	Cullen Commission
Cherisse Friesen Chantelle Rajotte Jacqueline Hughes	B.C. (Ministry of Finance and Gaming Policy and Enforcement Branch)
B.J. Wray Hanna Davis	Canada
Ludmila Herbst, QC Catherine George	Law Society of B.C.
Ron Usher	Society of Notaries Public of B.C.
William Smart, QC	B.C. Lottery Corporation
Mark Skwarok Melanie Harmer	Great Canadian Gaming Corporation
Christine Mainville	Robert Kroeker
Robin McFee, QC Maya Ollek	James Lightbody
Patrick Weafer	B.C. Real Estate Association
Latoya Farrell	BCCLA
Jo-Anne Stark	Canadian Bar Association, B.C. Branch
Kevin Comeau	Transparency International Coalition

## TABLE OF CONTENTS

	PAGE
Witness called for the Commission:	
<b>DR. WILLIAM GILMORE</b>	
Examination by Ms. Latimer	1
Examination by Ms. Herbst	21
Examination by Mr. Usher	22
Examination by Ms. Mainville	24
Examination by Mr. Comeau	34
<b>EXHIBITS</b>	
20 Summary of Canada's Follow-Up Reports to the FATF (2017-2019)	10

1  
William Gilmore (for the Commission)  
Examination by Ms. Latimer, Counsel for the Commission

2 Vancouver, B.C.  
3 June 4, 2020

4 THE REGISTRAR: Good morning. The hearing is resumed.

5  
6 WILLIAM GILMORE, a witness,  
7 recalled.

8  
9 THE COMMISSIONER: Yes, Ms. Latimer.  
10 MS. LATIMER: Thank you. Good morning.

11  
12 EXAMINATION BY MS. LATIMER, continuing:

13  
14 Q Professor Gilmore, when we left off yesterday, we  
15 were discussing Moneyval, and I'm now ready this  
16 morning to turn to discussion of Canada's  
17 performance in its fourth-round mutual evaluation  
18 report which was published in 2016.

19 A Very good.

20 Q You say that the evaluation of Canada came fairly  
21 early in the cycle, with its sole focus being on  
22 the revised 40 recommendations of February 2012,  
23 and given that the onsite visit occurred in 2015  
24 and the report adopted by the plenary was adopted  
25 by the plenary in 2016, I take it that this  
26 mutual evaluation does not address updates to the  
27 standards that have occurred on an ad hoc basis  
28 since then; is that correct?

29 A That is -- that is correct. Although under the  
30 FATF procedures for the fourth round, there will  
31 be an opportunity to take cognisance of those  
32 developments in the standards and alterations and  
33 methodologies in the follow-up report when re-  
34 ratings are requested by Canada. And that is  
35 expected to be, from memory, now in October 2021.  
36 Now, at that stage, those more recent alterations  
37 to standards will come into focus, irrespective  
38 of the rating given in 2016 to the technical  
39 recommendation in question. So that if there has  
40 been an amendment to a particular recommendation,  
41 even if that was originally regarded as  
42 compliant, or largely compliant by virtue of the  
43 alterations since the date of the onsite visit to  
44 Canada, which was November 2015, those issues  
45 would arise for consideration in that context.

46 Q And so one of the areas where there has been  
47 amendments, am I right, is on information-sharing

1 requirements in 2017?

2 A There are a number listed in the report, which I  
3 submitted at page 30 of that report, in paragraph  
4 59, and mentioned there are alterations of some  
5 kind to recommendation 2, recommendation 5,  
6 recommendation 7, recommendation 8 and  
7 recommendation 18.

8 I'd like to draw to the attention of the  
9 Commissioner an oversight on my part. There has  
10 been a further alteration or amendment to the  
11 standards, which was mentioned at an earlier  
12 stage of my text, but not at page 30, namely, in  
13 relation to virtual assets, and that came by way  
14 of tweaks to recommendation 15. And I apologize  
15 for failing to marry up the two parts of the  
16 report more efficiently.

17 Q Okay, thank you. You addressed the assessment of  
18 formal compliance first in your report, and you  
19 note that the individual criteria are not to be  
20 regarded as possessing equal importance. And I'm  
21 wondering if you can just explain that in a bit  
22 more detail for us?

23 A Yes. What the technical compliance methodology  
24 does is to break down each recommendation into  
25 its -- into its requisite parts, those deemed to  
26 be non-optional. And the evaluators are to  
27 address each of those specific criteria.  
28 However, in reaching a view on the appropriate  
29 rating, they are instructed to take account of  
30 the -- the nature of the criteria within the  
31 context of the jurisdiction being evaluated and  
32 the materiality, if you like, of that particular  
33 criteria, in the context of that jurisdiction,  
34 and to weight the criteria in the methodology for  
35 that particular recommendation accordingly.

36 Q Okay. Yesterday you said that one of the  
37 features of the amendment to the standards, the  
38 most recent one, was that it was -- and I'm sort  
39 of paraphrasing what you said -- but my  
40 understanding from what you said was that it was  
41 sort of expected that peoples' technical  
42 compliance would be improved because the  
43 effectiveness piece had been separated out. And  
44 I see in your report that when you discuss  
45 Canada's technical compliance, it nevertheless  
46 reveals a mixed picture. And I'm wondering if  
47 that's surprising?

1 A Well, on the first point. I think the -- what I  
2 was -- the message I was trying to convey was  
3 that one of the consequences of removing  
4 considerations of effectiveness from the  
5 technical compliance methodology was that, in  
6 contrast to the 2008 report, effectiveness  
7 couldn't therefore have either a positive or  
8 neutral or a downward pressing effect on the  
9 rating.

10 Speaking more generally, since many of the  
11 effectiveness concerns noted in the third round  
12 of evaluations, including in relation to Canada,  
13 impressionistically, were more on the negative  
14 than on the positive side, the expectation would  
15 be all things remain equal, that that would place  
16 an upward pressure on the ratings to be achieved  
17 in the fourth round.

18 That said, bear in mind, as we discussed  
19 yesterday, that a range of the recommendations  
20 were amended in 2012. So, to that extent, you're  
21 not comparing like with like. And so that there  
22 have been variations in the standards. So doing  
23 a straight cross-comparison between the two is  
24 one to be done with some caution. I mean, it can  
25 be done, and I have done it, to a limited extent  
26 in the report, but with that health warning.

27 Am I surprised? Hmm, not entirely. I think  
28 partially for the reasons that I've mentioned.  
29 There are a number of areas in which the Canadian  
30 technical assessment ratings remained high or  
31 went higher. There are other areas in which they  
32 remained broadly static. And the most  
33 problematic area, I suppose, is in the  
34 recommendations relating to prevention where, if  
35 you take a look, as I've done in a table which is  
36 presented in the report at page 28, I think what  
37 that indicates is that in the vast majority of  
38 instances in which there has been a -- in which  
39 there were suboptimal ratings afforded to Canada  
40 in 2016, that all but one of those were in areas  
41 of relative weakness in 2008, as well. And there  
42 could be all sorts of explanations for that. But  
43 I would have thought, looking at the number of  
44 those suboptimal ratings in both 2008 and 2016,  
45 would have been a source, I suppose, of some  
46 disappointment to the Canadian authorities.

47 I'm not sure to what extent that answers

1 your question.

2 Q Thank you. I do think --

3 A And that's approximation.

4 Q That's helpful. And you say at paragraph 56 of  
5 your report that in the area of reporting  
6 suspicious transactions, Canada attracted a  
7 negative rating in 2016, whereas it did better in  
8 2008. Do you have a view on what accounts for  
9 that setback?

10 A I've read the relevant parts of both reports  
11 several times, trying to come up with an  
12 explanation. There were some changes in the  
13 Canadian approach to suspicious transaction  
14 reporting, but those were positive changes. My  
15 guess -- and it's only a guess, because it's not  
16 clarified in the report -- is that the evaluators  
17 in 2016 took a more strident view of the  
18 timeframe for reporting which, from memory, was  
19 -- is 30 days. But it appeared to be 30 days as  
20 a maximum period for the filing of suspicious  
21 transactions in the analysis of the 2008 report.  
22 So, on the basis of what is said in the 2016  
23 report -- and this may be that there's been some  
24 brevity at the expense of clarity, perhaps --  
25 that is the most likely explanation, but I have  
26 not seen a complete explanation elsewhere, but  
27 that is what I surmise, subject to correction.

28 Q And you say that this is an area that the FATF  
29 attaches special significance to, and I'm  
30 wondering if you could explain why that is? Do  
31 you have a view on that?

32 A Yeah, if you -- this is something which was  
33 particularly evident in the third round and  
34 continues to an extent in the fourth round, where  
35 the FATF came up, in the third round, with  
36 concepts of core and key recommendations. And we  
37 touched upon this to a limited extent yesterday.  
38 And that concept of core recommendations has been  
39 carried forward into the fourth round procedures  
40 in a couple of different ways. But the areas  
41 covered are the money -- the criminalization of  
42 money laundering, the criminalization of  
43 terrorist financing, customer due diligence,  
44 suspicious transaction reporting, and  
45 recordkeeping. And I suppose that the underlying  
46 assumption of the FATF is that without those,  
47 that those are the -- in effect, the major

1 building blocks of a national anti-money  
2 laundering system, and to the extent that there  
3 is not compliance, or not complete compliance,  
4 that that can have a wider impact on the  
5 implementation and efficiency of the system.

6 They then, in two-thousand -- in the third  
7 cycle of evaluations, which included the 2008  
8 Canadian report, had a concept of key  
9 recommendations. So there were core and key.  
10 There were 10 additional key recommendations, a  
11 sort of outer core, if you like, but that concept  
12 has faded from view in the current procedures.  
13 But what one is left with is some continuing  
14 recognition of the special importance in  
15 centrality of the recommendations which I've  
16 alluded to, including suspicious transaction  
17 reporting.

18 Q And you say in your report that a negative rating  
19 on even just this factor alone, because it's a  
20 core factor, would qualify Canada for an enhanced  
21 follow-up?

22 A Yeah.

23 Q But you also say that Canada also found a second  
24 route to enhanced follow-up, and can you tell us  
25 about that?

26 A Yeah. Enhanced follow-up is, in large measure,  
27 manifested in the requirement to report to the  
28 FATF on a much more regular basis in terms of  
29 post-report on the steps being taken to address  
30 identified deficiencies. And on the technical  
31 compliance side, one, as you have mentioned, is a  
32 negative rating on one of the core  
33 recommendations, including suspicious transaction  
34 reporting. The other is having in excess of  
35 eight non-compliant or partially compliant  
36 technical assistance ratings. And unfortunately,  
37 and as I think made clear in the table we were  
38 discussing just a moment ago, Canada exceeded  
39 that baseline number of eight. I think it's  
40 attracted 11 of those suboptimal ratings.

41 So, even if suspicious transaction reporting  
42 had been assessed at a higher level, Canada would  
43 still have ended up in enhanced follow-up  
44 because, under that scenario, would have had 10  
45 rather than the eight required to avoid that  
46 process.

47 Q And you say -- I'm just reading from paragraph 57



1 of your report. You say:  
2

3 For an original member of the Task Force to  
4 qualify for this unwanted status under both  
5 headings must have been the cause of  
6 disappointment both within the Canadian  
7 delegation and among the wider FATF  
8 membership.  
9

10 A [Indiscernible - break in recording].

11 Q I'm just wondering, could you tell us a bit, what  
12 you mean by that?

13 A Well, nobody courts a suboptimal outcome, and  
14 within the procedures of the FATF, enhanced  
15 follow-up is self-evidently a suboptimal outcome  
16 for any member. But for -- and this is a purely  
17 personal view, which is not reflected in any way  
18 in the procedures of the FATF -- they treat all  
19 members alike -- but as a personal matter, I  
20 would have hoped that those who -- those  
21 jurisdictions which have been around for the  
22 longest and have taken leadership roles to one  
23 extent or another would have found themselves in  
24 a position to avoid such a suboptimal outcome.  
25 So it was an expression of a personal -- a  
26 personal view, and that is the context of the  
27 expression of that view.

28 I would say, however, that enhanced follow-  
29 up is by no means unusual in the FATF or in the  
30 FSRBs. Many jurisdictions have found themselves  
31 in enhanced follow-up, even in the current round.  
32 My guess is that most of them, but not all, have  
33 ended up in enhanced follow-up, not through  
34 underperformance, if you like, in the technical  
35 compliance category, but through underperformance  
36 in the effectiveness component of the  
37 methodology. Certainly impressionistically, that  
38 has been the normal route into enhanced follow-up  
39 for Moneyval member states.

40 Canada's not unique amongst the original  
41 seven members so far, and thus far, I think three  
42 -- in addition to Canada, there have been three  
43 further original members of the task force who  
44 have been evaluated in the current cycle. I  
45 suppose because I'm European-based, I tend to  
46 think first of the European jurisdictions, and  
47 those were Italy and the United Kingdom. And the

1 outcome for both Italy and the United Kingdom, on  
2 both technical compliance and on effectiveness  
3 ratings, was substantially better than in the  
4 case of Canada. I think Italy had perhaps three  
5 technical compliance ratings of below largely  
6 compliant, and the United Kingdom had two. And  
7 then when one looks at the effectiveness  
8 component, both have eight of the 11 immediate  
9 outcomes above the bar, so moderate -- I mean,  
10 substantial or higher, and the UK actually have a  
11 number -- I can't remember the exact number of  
12 the sort of gold standard high level of  
13 effectiveness ratings. Italy's were all  
14 substantial rather than high.

15 The closest comparison to Canada of those  
16 evaluated so far from the original membership is  
17 the United States, which may give some comfort to  
18 the Canadian authorities. And it manifested  
19 itself in the same way as a technical matter in  
20 that the United States had 10 suboptimal  
21 technical compliance ratings as opposed to  
22 Canada's 11, and went into enhanced follow-up as  
23 a consequence, and there it remained.

24 I suppose the optics of the outcome of the  
25 mutual evaluation as a whole, though, is slightly  
26 more favourable to the United States because it  
27 did substantially better in terms of the ratings  
28 achieved under the effectiveness heading. So,  
29 but Canada -- I suppose the basic point is that  
30 Canada, although the outcome may have been  
31 disappointing, or perhaps should have been  
32 disappointing, is not alone by any manner of  
33 means. And it is an outcome which is  
34 disappointing rather than dire, in my view, and  
35 one should not equate the two.

36 Q In terms of understanding where Canada sits as  
37 compared to other nations, is it correct that the  
38 place to look for a snapshot on that is the 2020  
39 FATF Consolidated Table of Assessment Ratings?

40 A Yes, the -- it's very helpful. The FATF compiles  
41 an update of each plenary meeting, that -- that  
42 table, which addresses not just FATF members, but  
43 all members of the global network, so to speak,  
44 which have been subject to evaluation in the  
45 current round. So, if one has an interest in how  
46 Canada's assessment in relation to, for example,  
47 recommendation 1 or IO-1 on risk, the extent --

1 the manner in which that compares to performance  
2 elsewhere, then it will be reflected on an  
3 updated basis three times a year in the table  
4 you've referred to. And that's quite handy.

5 MS. LATIMER: Okay, and I'll just note for the record,  
6 Mr. Commissioner, that that table is found at  
7 Exhibit 4 in Appendix I.

8 Q And then, Professor Gilmore, moving along to  
9 paragraph 58 of your report where you describe,  
10 in a sort of summary way, the process that Canada  
11 has followed since the 2016 mutual evaluation  
12 report, and I'm wondering if you could just first  
13 describe that process, and then second, describe  
14 the limits on your ability to access records  
15 about that process?

16 A Yeah. In the enhanced follow-up procedures, a  
17 country such as Canada, subject to it in a  
18 technical compliance context, is required, as I  
19 mentioned earlier, to report with regularity to  
20 the FATF and to indicate in that report the areas  
21 in which and the extent to which they have been  
22 making progress to address the deficiencies  
23 reflected in their -- in their reports in  
24 relation to the recommendations in which they  
25 performed in a suboptimal way. And Canada has,  
26 thus far, submitted three such reports.

27 Those reports are then digested and  
28 summarized for the benefit of plenary by the FATF  
29 Secretariat. And so what you have are two  
30 document flows. Firstly, a submission by the  
31 Canadian authorities to the FATF and then the  
32 Secretariat summary, along with a cover paper on  
33 any policy implications which may arise from it,  
34 from the FATF Secretariat to the plenary.

35 Now, none of those papers are in the public  
36 domain because the FATF publication policy is  
37 tied to the final element of the enhanced follow-  
38 up process, which is the outcome of a request for  
39 re-rating. And to date, the Canadian authorities  
40 have not requested re-ratings, though the normal  
41 expectation under the procedures is that  
42 technical compliance issues would have been  
43 addressed within -- for most of them -- within a  
44 three-year period, and that that would then be  
45 followed by a re-rating request. Once the re-  
46 rating request is examined and determined by the  
47 plenary, the documentation relating to it is then

1 published on the FATF website. We have not  
2 reached that situation as yet, and so members of  
3 the public are not able to access that  
4 information at present.

5 It's my understanding that in the October  
6 2019 plenary, Canada was requested to seek re-  
7 rating, and a date for it doing so, which is well  
8 beyond the three-year normal expectation, was set  
9 initially at -- I think it was June 2021. I  
10 mention a particular date. But more recently --  
11 and this is in the public domain -- as a  
12 consequence of the current COVID-19 pandemic, the  
13 FATF has postponed and rescheduled some of its  
14 activities. And my understanding is that one of  
15 the consequences of that is that Canada's re-  
16 rating request on technical compliance will come  
17 at a later stage of 2021. I think that's the  
18 October 2021 meeting is the -- I think, as I  
19 understand it -- fairly firm expectation of the  
20 FATF. And following that, assuming that those  
21 timelines hold, then the material will enter the  
22 public domain.

23 If the Commission and other participants  
24 wish to see an example of such documentation,  
25 quite recently on the FATF website, the outcome  
26 of the U.S. re-rating request was published I  
27 think back in March, and is readily available.  
28 So one can see the type of documentation which  
29 would be forthcoming at a later stage with  
30 respect to Canada.

31 MS. LATIMER: Okay, and Madam Registrar, I'll just ask  
32 if at this point we could display, please,  
33 document 16A from the list of documents?

34 Q This -- Professor Gilmore, do you recognize this  
35 as the summary that Canada sent of its follow-up  
36 reports for the FATF from 2017 to 2019?

37 A Yes, I can confirm that I received this  
38 documentation relatively recently from counsel to  
39 the Commission.

40 MS. LATIMER: Madam Registrar, I don't need to have  
41 that displayed anymore, but Mr. Commissioner, I  
42 will ask that that document be marked as the next  
43 exhibit, please.

44 THE COMMISSIONER: Very well. I think we're at 21,  
45 are we, Madam Registrar?

46 THE REGISTRAR: It's number 20, Mr. Commissioner.

47 THE COMMISSIONER: 20. I'm sorry. Thank you.

1  
2           EXHIBIT 20: Summary of Canada's Follow-Up  
3           Reports to the FATF (2017-2019)  
4

5 MS. LATIMER:

6 Q Professor Gilmore, you had an opportunity to  
7 review those summaries, I take it, and what did  
8 you understand from that about Canada's progress  
9 since its fourth-round mutual evaluation report?

10 A Well, it's a little difficult for the outsider to  
11 get their heads around. These documents  
12 constitute a summary of whatever material Canada  
13 submitted on these three occasions, starting in  
14 2017, and it's presented partially on a  
15 cumulative basis. I think it's -- it's difficult  
16 to reach a firm view, as an outsider, in part,  
17 because some of the information goes not to  
18 technical compliance, but to effectiveness  
19 concerns. And that is standard. But it's not  
20 separated out in terms of the way in which the  
21 summaries have been constructed. And it comes  
22 without any form of gap analysis, in other words,  
23 it records, in broad summary outline, certain  
24 steps which have been taken by Canada, as a  
25 member, to address FATF concerns, but nowhere  
26 does it seem to indicate what still remains to be  
27 done in the view of the Government of Canada to  
28 further address those concerns.

29           If any -- one assumes that there must be  
30 something, or they would have taken advantage of  
31 the ability to make re-rating requests. One area  
32 which is flagged up as still open-ended is that  
33 in reports 2 and 3, at least, Canada reports to  
34 the FATF that it has entered into a dialogue with  
35 the representatives of the legal professions in  
36 Canada in relation to their current exemption  
37 from anti-money laundering measures flowing from  
38 the 2015 Supreme Court report, and in the most  
39 recent of the three reports from October 2019, it  
40 appeared at that stage that that dialogue was  
41 still ongoing. But there may be other areas in  
42 which further action is in contemplation, but  
43 that is -- that is less clear.

44           I suppose finally, the adequacy of the  
45 measures thus far taken by Canada have -- the  
46 adequacy of those measures have not yet been  
47 subject to evaluation by the FATF Secretariat in

1 a formal way, let alone by the FATF plenary. And  
2 that external evaluation of the sufficiency of  
3 the measures adopted will only take place, in my  
4 understanding, at the time of the receipt of the  
5 re-rating request in 2021.

6 So, beyond that, it seems that a range of  
7 the issues which are highlighted in the 2016  
8 report have attracted attention from the Canadian  
9 authorities, including issues like beneficial  
10 ownership. But I have not attempted -- and it  
11 would be very difficult for anyone who was not an  
12 evaluator, or who didn't have sight of the full  
13 documentation to reach an informed view of the  
14 adequacy of the steps which have been taken in  
15 these areas to date. And I have not attempted to  
16 do so.

17 Q Because you -- in part, because you don't have  
18 that kind of access to the data and information  
19 that you would if you were doing an assessment;  
20 is that right?

21 A Well, I don't have access to -- even to the full  
22 text of the Canadian submission to the FATF, and  
23 to attempt to do this on the basis of summary  
24 documentation struck me as unwise. And for good  
25 or ill, that is the position I took, and so I'm  
26 not in a position, for those reasons, to assist  
27 the hearing with a personal view on whether these  
28 are adequate or inadequate measures, or will be  
29 when they are completed.

30 Q Okay. I was hoping you could -- we could spend a  
31 bit of time talking a bit more about the  
32 effectiveness assessment. And so I'm going back  
33 to your report now where you deal with this at  
34 paragraph -- well, I'm going to come back to  
35 paragraph 60, but if we could look for a minute  
36 at paragraph 61, and that is where you note that  
37 Canada had a lower rating in six of the 11  
38 immediate outcomes in the effectiveness  
39 assessment, and those lower ratings are called  
40 low and moderate, and that Canada didn't get any  
41 gold standard of high level of effectiveness on  
42 any of the 11 immediate outcomes. Is that -- are  
43 those findings surprising to you?

44 A Not particularly, in the sense that a substantial  
45 rating is clearly above the line, and  
46 impressionistically, is the positive rating most  
47 frequently given. I think if one was to look at

1 the report of Italy, I think it had something  
2 like eight of the 11 above the line, all of which  
3 were substantial, and none of which were high.  
4 And that struck me as a kind of outcome which the  
5 Italians would have been quite content with, in a  
6 way. It's always nice to be top of the class,  
7 but that is -- its substantial rating on the  
8 descriptors is that moderate improvements are  
9 needed, but that the immediate outcome has been  
10 achieved to a large extent, and I think achieving  
11 such an outcome in the first round of  
12 evaluations, which has seriously sought to  
13 address the difficult issue of effectiveness,  
14 would give comfort to many jurisdictions. If  
15 you're able to exceed that and pull in some high  
16 levels of effectiveness ratings, all the better.  
17 But I think having been judged to have met the  
18 objectives of the immediate outcome to a very  
19 substantial extent is a pretty positive outcome.

20 If there was a -- this is me putting myself,  
21 unwisely perhaps, in the position of someone in  
22 the Ottawa delegation -- my concern would have  
23 been not that we didn't get any gold standard  
24 high ratings, but that six of the 11 ratings were  
25 moderate or low. Now, to contextualize that, one  
26 of the avenues into enhanced follow-up through  
27 the effectiveness process is suboptimal  
28 performance on effectiveness. Canada did not  
29 meet that negative threshold. But that negative  
30 threshold, from memory, is seven ratings out of  
31 11 of moderate or low effectiveness. So that one  
32 wasn't too far beyond that possibility on the  
33 effectiveness side.

34 So, an overall outcome which, on  
35 effectiveness, perhaps would have disappointed,  
36 but did not fall below any kind of expectation  
37 thresholds reflected in the specific procedures  
38 of the task force. So they were safe.

39 Q And you spent some time in your report discussing  
40 the interaction between the technical compliance  
41 ratings and the effectiveness ratings, and I was  
42 wondering if you could just walk us through that  
43 a little bit this morning?

44 A Yeah, the basis for both of these assessments is  
45 somewhat different. The technical compliance  
46 assessment is, in essence, largely a technical  
47 question, to what extent have these requirements

1           been met, and only thereafter, to what extent, if  
2           at all, do some of these negative outcomes within  
3           the criteria of an individual technical  
4           compliance recommendation, what -- when looked at  
5           in terms of context and materiality, how  
6           important is that, goes, I suppose, to judgment  
7           rather than technical assessment.

8           The effectiveness considerations are quite  
9           different. The 11 immediate outcomes identify  
10          what the FATF regards as the key components of an  
11          effectively operating AML system. And as we  
12          discussed yesterday, within the methodology the  
13          evaluators are required to look at a range of  
14          core issues within the methodology for each of  
15          those immediate outcomes and to apply their  
16          background experience and judgment to an  
17          assessment of the extent to which the country  
18          subject to assessment meets the expectations set  
19          out in the methodology for that particular  
20          immediate outcome. So there is more of a  
21          subjective judgment element inherent in the  
22          effectiveness assessment component.

23          And because the two structures of assessment  
24          differ in a -- in those ways, it's difficult to  
25          anticipate a direct read-across from the  
26          technical to the effective. Within the  
27          methodology, the one possible exception to that,  
28          which they point out, is that a country which has  
29          a poor level of technical compliance is more  
30          likely than not to also have a poor level of  
31          effective implementation. But if you turn that  
32          about and ask yourself, if a country has a high  
33          level of technical compliance, does that  
34          presuppose that there will be an equally high  
35          level of effectiveness, both the methodology and  
36          indeed the FATF training say --, make no such  
37          assumption. And one could give a whole series of  
38          illustrations, I assume, of why that should be.

39          If, for example, taking an area like the  
40          criminalization of money laundering, the criteria  
41          in a technical compliance sense point out what  
42          the ingredient -- what the required ingredients  
43          in the criminal offence should be. If you can  
44          tick all of those boxes, then you will receive a  
45          compliant rating. However, when you come to  
46          effectiveness, take a hypothetical jurisdiction  
47          X, in X, an entirely watertight compliant



1 criminal offence, then it gets a high mark for  
2 technical compliance. But if it doesn't  
3 investigate any money laundering offences in  
4 practice, because it doesn't prosecute potential  
5 offenders identified through those  
6 investigations, and secures no convictions, then  
7 the methodology, unsurprisingly, would say you  
8 have not demonstrated any effectiveness in this  
9 area, and a poor effectiveness rating would  
10 naturally result, that of the most obvious and  
11 extreme level.

12 Q You -- At paragraph 64 and 65 of your report, you  
13 describe Canada's national risk assessment, and I  
14 was hoping you could just walk us through the  
15 requirement to do a risk assessment and where  
16 that comes from or why that was produced?

17 A There isn't a specific requirement in the FATF  
18 standards to conduct a national risk assessment.  
19 What recommendation 1 does is to require  
20 countries to -- from memory -- to identify, to  
21 assess and to understand their money laundering  
22 and terrorist finance risks. It doesn't  
23 stipulate a mechanism through which that  
24 understanding must be exhibited.

25 So there's no requirement for a national  
26 risk assessment, as such. But the vast majority  
27 of countries with which I have any familiarity  
28 have sought to manifest or demonstrate their  
29 identification, assessment and understanding of  
30 their risk through the conduct of a national risk  
31 assessment. And this has been, for many members  
32 of the international community, an entirely new  
33 and, quite often, very labour-intensive  
34 undertaking. So this is not something which  
35 countries have regularly been doing. And some  
36 countries have approached this in way of  
37 developing their own methodology for undertaking  
38 such a national assessment. Others have used  
39 models for risk assessment which have been  
40 produced elsewhere.

41 For the Moneyval member countries, many who  
42 have gone down this route thus far have elected  
43 to utilize a risk assessment model developed by  
44 the World Bank, but they have done that out of  
45 convenience and because it has been tried and  
46 tested in a variety of jurisdictions now.

47 And - so the Canadian national risk

1 assessment of 2015, which I -- which I have read,  
2 is, as I understood it, the first attempt within  
3 Canada to produce a comprehensive risk  
4 assessment. I'm sure that within Canadian law  
5 enforcement and elsewhere, risk assessments of  
6 various kinds have been made over time, but what  
7 seems to distinguish the 2015 exercise from  
8 others was, (a) that it was -- or purported to be  
9 -- comprehensive in nature, and secondly, that at  
10 least a version of it became a public document.  
11 And it is the public version of that risk  
12 assessment which is referred to in the context of  
13 the 2016 mutual evaluation. And when one reads  
14 that evaluation report, it is clear that, one, in  
15 addition to the public version, that for internal  
16 confidential use, a perhaps more extensive  
17 version was produced which, for security and  
18 other reasons, was not put into the public  
19 domain, but the assessment team felt that it had  
20 to utilize the version to which the public would  
21 have access, and that, it did.

22  
23 [Ms. Latimer's audio feed briefly cut out]

24  
25 Q Here I am - uhm, thank you. One of the key  
26 findings, you say, is that Canada needs to  
27 mitigate the risks emanating from legal counsels,  
28 legal firms and Quebec notaries in their  
29 performance of the activities listed in the first  
30 immediate outcome, I think. Can you tell us a  
31 bit more about that?

32 A This, again, is something that we touched upon,  
33 at least in part, yesterday. In 2003, the FATF  
34 recommendations, when amended, were amended in  
35 such a way as to include a range of designated  
36 non-financial businesses and professions, and  
37 amongst the professions so captured in those  
38 recommendations were legal professionals -- in  
39 essence, legal professionals in private practice.  
40 And they were to be subject to customer due  
41 diligence requirements, and with a carveout for  
42 the FATF, I suppose, for client-lawyer privilege  
43 or confidentiality would be subject within a  
44 specific range of activities which do not include  
45 court representation activity, would be also  
46 subject to a form of suspicious transaction  
47 reporting, either directly to the Financial

1 Intelligence Unit, or indirectly through the  
2 profession's appropriate self-regulatory body.

3 That, as I had mentioned yesterday, is an  
4 innovation which has given rise to difficulties  
5 in a number of jurisdictions, but in the Canada-  
6 specific context, resulted as -- you and your  
7 colleagues will know far better than I -- in a  
8 Supreme Court ruling in I think it was February  
9 2015, which held the efforts to bring about  
10 Canadian compliance with that part of the FATF  
11 recommendations as unconstitutional.

12 Now, the timing, in a way, couldn't have  
13 been worse, because it wasn't that many months  
14 later that the FATF onsite visit occurred. And,  
15 quite obviously, both in relation to immediate  
16 outcome 1 and, more generally, in the report, the  
17 view was taken that given what the 2015 national  
18 risk assessment of Canada had identified as a  
19 high-risk area -- or the legal professions  
20 engaged in a range of intrinsically high-risk  
21 activities from an AML perspective. The failure  
22 to mitigate, though having recognized the risk  
23 and failed to, no doubt, for very good  
24 constitutional reasons, to mitigate those risks  
25 by the time of the onsite visit was regarded as a  
26 serious source of difficulty in terms of  
27 compliance with the overall standard. And that  
28 was reflected very clearly in the assessment of  
29 immediate outcome 1 and -- but in the sense of it  
30 cascaded into areas and other immediate outcomes,  
31 including supervision and preventive measures.  
32 So it was a sole factor which had a variety of  
33 negative ramifications for the Canadian  
34 effectiveness assessment overall.

35 Q You mentioned that it sort of cascaded into the  
36 supervision and also preventative measures, and  
37 you mention in your report that preventive  
38 measures is a particularly complex area to  
39 evaluate, and I was wondering if you could tell  
40 us a bit more about that?

41 A Well, the -- it engages a whole series of  
42 different recommendations of the FATF, so it's  
43 across the board, it's taking account of I think  
44 more recommendations, the relevant immediate  
45 outcome, which is immediate outcome 4, has more  
46 in the sense, technical feed-ins from the  
47 standards than any other of the immediate

1 outcomes. So it's complex in that sense.

2 It also bundles together preventive measures  
3 as they apply to banks and other financial  
4 businesses with preventive measures as they apply  
5 to designated non-financial businesses and  
6 professions, and so on. So it's complex in terms  
7 of the range of issues of substance that is  
8 engaged or that are engaged under that heading,  
9 more than anything else.

10 In the point of view of Canada, and looking  
11 at the technical compliance dimension which forms  
12 part of the context at least of effectiveness,  
13 measures of prevention were also the area in  
14 which -- was an area in which the technical  
15 outcome was mixed -- quite mixed. There was only  
16 one other area, which is beneficial ownership and  
17 associated transparency concerns where the  
18 picture was significantly more negative from a  
19 technical compliance standpoint.

20 So, but when you take a look at the -- at  
21 IO-4 on prevention or IO-3 on supervision, if you  
22 look at the key findings in those parts of the  
23 report, the issue that you previously raised,  
24 that of the failure to mitigate the risks thus  
25 far flowing from the legal professions Supreme  
26 Court mandate of exemption comes up, and comes up  
27 pretty high on the list. In fact, I would have  
28 to check, but I -- from memory, I think that it  
29 was the first mentioned key finding under both,  
30 subject to correction. I could check just now,  
31 if you like, but that's my memory.

32 And perhaps a further indication of this is  
33 that if you take a look at the key findings of  
34 the report as a whole rather than the key  
35 findings for each of the immediate outcomes --  
36 and these are reproduced on pages 3 and 4 of the  
37 2016 report -- now, where are we -- key finding 2  
38 -- key finding 1 is Canada has a very good  
39 understanding of its AML and terrorist financing  
40 risk, and that the 2015 assessment, which you had  
41 entered into the discussion just a few minutes  
42 ago, was one of good quality. Then key finding  
43 2:

44  
45 All high-risk areas are covered by AMLCFT  
46 measures except legal counsels, legal firms  
47 and Quebec notaries. This constitutes a

1                   significant loophole in Canada's AMLCFT  
2                   framework.  
3

4                   So I think that from the frequency with which  
5                   that issue arose in the individual immediate  
6                   outcomes, and the way in which it has been  
7                   positioned in the key findings for the report as  
8                   a whole, I think you have a -- it gives you a  
9                   basis for an insight into the weight which was  
10                  attached by the evaluation team to that factor  
11                  [indiscernible].

12                Q    I wanted to pick up on a point you made in part  
13                    in answering that question, which was about the  
14                    complexity of doing -- assessing this particular  
15                    IO-4, preventive measures. One of the points you  
16                    made was that it -- it assembles a broad number  
17                    of actors, everyone from banks or financial  
18                    institutions to designated non-financial  
19                    businesses.

20                A    Mm-hmm.

21                Q    I'm wondering if you could comment on how  
22                    assessors approach that for a jurisdiction like  
23                    Canada where those different sectors might be --  
24                    some of them might be federally regulated and  
25                    some of them might be provincially regulated, and  
26                    there might be differences across the country.  
27                    How is that approached?

28                A    Well, they try to get some feel within a federal  
29                    structure for different levels of compliance or  
30                    different approaches through compliance, which  
31                    may be manifested at the federal level on the one  
32                    hand and the provincial or state level on the  
33                    other. Now, how successfully an individual  
34                    evaluation team is able to address those  
35                    complexities will depend on the team in question  
36                    and the secretariat persons who are advising  
37                    them. There isn't a particular dimension to the  
38                    FATF methodology which addresses complexities  
39                    arising in federal jurisdictions, but there is an  
40                    expectation on the assessors to take cognisance  
41                    of that fact. Subject to the common-sense notion  
42                    that these people are outsiders. They are  
43                    outsiders. They are not going to come in and be  
44                    -- become or pretend to be Canadian experts.  
45                    They're not going to take a Canadian Supreme  
46                    Court judgment from 2015 and analyze and assess  
47                    its merits.

1           It is, very clearly under the methodology,  
2 very clearly, the onus is on the evaluated  
3 country to demonstrate the extent to which it  
4 has, in its view, secured the effective  
5 implementation of its -- of the requisite  
6 immediate outcomes. And so there is a  
7 significant implicit burden on those representing  
8 national interests in the assessment process to  
9 ensure, either through direct participation or in  
10 other ways, that the federal dimension to any  
11 particular issue is appropriately reflected in  
12 the presentations made and the documents provided  
13 to and the interchange of ideas that take place  
14 with the assessment teams. The onus isn't  
15 primarily on them, it's primarily on the assessed  
16 country.

17           I have no idea, in a Canadian-specific  
18 context, the extent to which or the manner in  
19 which the federal dimension was weighed or  
20 presented, but there are frequent references  
21 throughout the report to provincial-federal  
22 matters but not what you would describe as  
23 detailed analysis of the underlying issues as the  
24 evaluators sought. I'm not sure if that's an  
25 answer either.

26       Q     Well, I think it is, and I -- and I guess I take  
27 from that, you wouldn't expect, when you review  
28 one of these reports, to come away with an  
29 understanding necessarily of whether one  
30 province, for example, is outperforming another  
31 in terms of its anti-money laundering efforts?

32       A     No. Occasionally you get throwaway lines of that  
33 kind, but -- more throwaway lines than detailed  
34 analysis. Let me give you two examples. Going  
35 back to the issue of the legal professions. It  
36 is quite clear that the evaluators were made  
37 aware of the difference in background and  
38 function to notaries in British Columbia on the  
39 one part and the notaries in the Province of  
40 Quebec on the other. And so the formulation of  
41 the concern in relation to legal professionals  
42 excludes British Columbia notaries because of  
43 their different function. So, to that -- you can  
44 see in an example of that kind the way in which  
45 some of the federal dimension is picked up.

46           On the other hand, if one was to go to the  
47 immediate -- discussion of confiscation of

1 criminal proceeds and the effectiveness area,  
2 which is IO-8, headed "Confiscation," there is --  
3 where the general conclusion reached was that the  
4 rate at which criminal assets were being targeted  
5 and confiscated was disappointing, there are  
6 remarks -- and I think it's there, rather than  
7 the money laundering area -- that the Province of  
8 Quebec seems -- seemed to the evaluators to have  
9 performed at a higher level of effectiveness than  
10 perhaps others. But that's, in a way, the  
11 exception that proves the rule. Generally  
12 speaking, the assessment of Canada, national  
13 assessments had not gone into those kinds of  
14 details. Although it may differ from report to  
15 report, and I didn't try and do a cross-  
16 comparison of assessment reports from the current  
17 round involving federal jurisdiction.

18 MS. LATIMER: Thank you very much, Professor Gilmore.  
19 Mr. Commissioner, I think I'm at the end of my  
20 questions, but I might suggest, if we could take  
21 a break, and I have an opportunity to confer with  
22 my colleagues if there's anything that needs to  
23 be clarified, and then after the break, we have  
24 the Law Society and counsel for Mr. Kroeker and  
25 counsel for the Transparency International  
26 Coalition who have some questions.

27 THE COMMISSIONER: Yes, thank you, Ms. Latimer. We'll  
28 take 15 minutes, then.

29 THE REGISTRAR: The hearing is adjourned for a 15-  
30 minute recess until 11:00 a.m. Please mute your  
31 mic and turn off your video. Thank you.

32  
33 (WITNESS STOOD DOWN)

34  
35 (PROCEEDINGS ADJOURNED)  
36 (PROCEEDINGS RECONVENED)

37  
38 THE REGISTRAR: Thank you for waiting. The hearing is  
39 now resumed.

40 WILLIAM GILMORE, a witness,  
41 recalled.

42  
43 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
44 Ms. Latimer.

45 MS. LATIMER: Yes, Mr. Commissioner, I confirm that I  
46 have completed my questions for Professor  
47 Gilmore, and the next participant to ask

William Gilmore (for Commission)

Examination by Ms. Herbst, Counsel for the Law Society  
of B.C.

1 questions is the Law Society, Ms. Herbst.

2 MS. HERBST: Thank you very much, Ms. Latimer and Mr.  
3 Commissioner.

4

5 EXAMINATION BY MS. HERBST:

6

7 Q Hello, Professor Gilmore. As you may have  
8 gathered from that, my name is Ludmila Herbst.  
9 I'm counsel for one of the regulators here in  
10 Western Canada, the Law Society of British  
11 Columbia. And I must thank you and Ms. Latimer  
12 for going through, so helpfully, both your report  
13 and related subject matter, because that means I  
14 have very little left on my list of questions, so  
15 thank you for that.

16 So, Professor Gilmore, you've not suggested  
17 otherwise, but could you confirm that you've not  
18 been on any of the assessment teams over the  
19 years that have assessed Canada in the Financial  
20 Action Task Force framework?

21 A I can confirm that I have not so participated.

22 Q And I think flowing from that, can you confirm,  
23 as well, that you've not been yourself the author  
24 of any of the evaluation reports pertaining to  
25 Canada in the Financial Action Task Force  
26 framework?

27 A That is so.

28 Q And I'm sorry, I asked that question badly. It  
29 is correct that you've not been one of the  
30 authors?

31 A That's true. The authors through all of these  
32 reports are the evaluation teams themselves who  
33 have conducted the onsite evaluation and  
34 undertaking the technical compliance evaluation,  
35 as assisted by the FATF Secretariat.

36 Q Thank you. And currently -- and I think this is  
37 clear from your reference to -- in the course of  
38 questioning by Ms. Latimer in your response to  
39 the Canadian summaries of follow-up input  
40 provided to the task force. You're not currently  
41 involved in an assessment of Canada in that  
42 context either?

43 A No, I am not.

44 Q And you had mentioned, Professor Gilmore, two  
45 reports about Canada from the 1990s that were  
46 summarized in annual reports of the Financial  
47 Action Task Force, also from the 1990s.



William Gilmore (for the Commission)  
Examination by Mr. Usher, Counsel for the Society of  
Notaries Public of B.C.

1 Professor Gilmore, did you yourself see the  
2 underlying reports or simply the summaries that  
3 were provided in the annual reports?

4 A I have seen only the summaries. The -- to the  
5 best of my knowledge and belief, the underlying  
6 Canadian reports, in common with the others, have  
7 not been made public by the FATF. And so far as  
8 I'm aware, and this is subject to correction, I  
9 don't believe that they have been made public by  
10 the Government of Canada either. If they have, I  
11 have not seen them, nor have they been brought to  
12 my attention.

13 Q Thank you very much, Professor Gilmore, I  
14 appreciate that very much, and those are my  
15 questions.

16 A Thank you.

17 THE COMMISSIONER: Thank you, Ms. Herbst. I think  
18 we're now moving to -- is it Mr. Usher, for the  
19 Society of Notaries Public?

20 MR. USHER: Yes, good morning.

21  
22 EXAMINATION BY MR. USHER:  
23

24 Q Good morning, Mr. Gilmore. My name is Ron Usher.  
25 I'm general counsel for the Society of Notaries  
26 Public of B.C. We're the statutory regulator of  
27 the notary public practice in British Columbia.  
28 I just want to reference -- I think at about  
29 10:43, our time -- of course, I don't have a  
30 transcript -- you said something like the B.C.  
31 notaries are different in function, when you were  
32 talking about lawyers in British Columbia and the  
33 Quebec Notaries Public. I don't know how  
34 familiar you are with the unique legal practices  
35 of our members, but I will suggest to you that in  
36 fact there is no difference in function  
37 whatsoever in regard to real estate practice  
38 between members of the Society of Notaries and  
39 lawyers in British Columbia. Do you have any  
40 reason to think that's not the case?

41 A No, I think that the -- and it may have been a  
42 poor choice of language on my part. From memory,  
43 and therefore subject to correction, especially  
44 at my age, the distinction which was drawn in the  
45 -- in the 2016 FATF report between notaries in  
46 the Province of Quebec and notaries public in the  
47 Province of British Columbia related to the

William Gilmore (for the Commission)  
Examination by Mr. Usher, Counsel for the Society of  
Notaries Public of B.C.

1 extent to which they provided legal advice. Now,  
2 that was certainly my understanding from the  
3 report. I have not undertaken any study of the  
4 similarities or differences between them. But,  
5 again, subject to correction, I was merely  
6 seeking to reflect the distinction drawn in the  
7 2016 report between the two bodies in that way.

8 Q Thank you. And I'll make a point to look that  
9 up, because again, I'll suggest to you that  
10 British Columbia notaries public, in the  
11 provision of real estate services, provide legal  
12 advice to the same degree and requirement of any  
13 lawyer in British Columbia. Do you have any  
14 reason to think that's not the case?

15 A The way in which you have expressed the matter is  
16 not the way in which it was expressed, to my  
17 memory, in the report. It may be that the report  
18 was, in some material respect, inaccurate. I am  
19 not in a position to determine that one way or  
20 the other. And I hope my recollection is not too  
21 bad in terms of what I read. And that is how it  
22 came to be, or so it appeared to me, that the  
23 formulations in the report did -- on the non-  
24 application of CDD and suspicion transaction  
25 reporting measures to legal professionals, why  
26 they framed those -- their statements in that  
27 regard so as to exclude British Columbia notaries  
28 from that level of criticism. I hope I haven't  
29 misunderstood the report in that regard, but that  
30 was my understanding from reading it.

31 Q Thank you. It is common. Our notaries practice  
32 here actually originates from the mid-1800s  
33 practice of scribes and notaries in the City  
34 of London. So it is a very unusual derivation of  
35 the historical background of our membership and  
36 their practice. I'm told by the Scriveners Guild  
37 in London, looks very much like the practice of  
38 notaries in London in the mid-1800s, which is  
39 when British Columbia was founded. So there is  
40 an ancient historical thing for this. But it is  
41 understandable. So I appreciate your clarifying  
42 that, and it is worth looking at, but it is a  
43 common misunderstanding, and I thank you for your  
44 frankness. That's all I have.

45 A Thank you, sir.

46 THE COMMISSIONER: Thank you, Mr. Usher. I think now  
47 we are turning to counsel for Mr. Kroeker, Ms.

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

1 Mainville.

2 MS. MAINVILLE: Thank you.

3

4 EXAMINATION BY MS. MAINVILLE:

5

6 Q Hello, Mr. Gilmore. My name is Christine  
7 Mainville, and I am counsel to Mr. Kroeker, who  
8 was formerly the Vice President of Compliance  
9 with BCLC, the Lottery Corporation, in addition  
10 to other positions in that sector.

11 So if I could just start with clarifying the  
12 interplay between some of the recommendations  
13 relating to reporting and customer due diligence.  
14 And I'm referencing the most recent 2019  
15 recommendations. And just let me know if you'd  
16 like them to be turned up. We --

17 A No, I have them before me. Thank you.

18 Q Great. So, recommendation 22 provides that  
19 casinos, as designated non-financial businesses,  
20 should comply with customer due diligence and  
21 recordkeeping requirements set out in  
22 recommendations 10, 11, 12, 15 and 17, when  
23 customers engage in financial transactions equal  
24 to or above the applicable designated threshold.  
25 And -- yes, and the interpretive note to that  
26 recommendation is that that threshold for casinos  
27 is 3,000 euros or U.S. dollars, correct?

28 A That is my understanding.

29 Q And then if we go to recommendation 10, it  
30 requires customer due diligence -- due diligence  
31 measures to be taken both -- amongst other  
32 instances, but both when there is a suspicion of  
33 money laundering or terrorism financing, and when  
34 carrying out occasional transactions above the  
35 applicable designated threshold of 15,000 euros  
36 or U.S. dollars?

37 A Mm-hmm.

38 Q And I take it that this would be the equivalent  
39 in Canada to two separate notions, or two related  
40 types of reports, the first being what we in  
41 Canada call the large cash transaction threshold,  
42 so a transaction -- or a threshold, rather, at  
43 which a transaction must be reported and certain  
44 obligations kick in. And the other, which is, I  
45 believe, sub (3), the other category being  
46 suspicious transaction reports which are aimed at  
47 any suspicious transaction irrespective of the

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

1           \$15,000 threshold having been met. Is that fair?

2       A     Well, I think it's fair, if I have understood  
3           where you're coming from, in relation to  
4           financial institutions, because it is --  
5           recommendation 10 is framed with reference to  
6           customer due diligence for financial  
7           institutions. I have not done a read-across in  
8           quite the same way that you have in terms of the  
9           inter-relationship between recommendation 22 and  
10          that part of recommendation 10 that you've --  
11          that you have mentioned. I'm not saying that  
12          you're wrong. I'm just saying that I haven't  
13          thought of it in quite that way.

14                 And if I could look again at 22, it says the  
15          customer due diligence recordkeeping requirement  
16          set out in recommendations -- including  
17          recommendation 10 -- apply to designated non-  
18          financial businesses and professions in the  
19          following situations. And then it has, as you  
20          have correctly indicated, casinos, when customers  
21          engage in financial transactions equal to or  
22          above the applicable designated threshold.  
23          Unlike dealers in precious metals and stones,  
24          that is financial transactions, not cash  
25          transactions. And it must be said that my -- my  
26          own reading of this was that it was applying a  
27          lower threshold in respect of casinos than would  
28          be applicable to a financial institution under  
29          recommendation 10.

30       Q     Okay.

31       A     But I hadn't given the matter any advanced  
32           thought at all.

33       Q     Okay, perhaps I can tell you what my  
34           interpretation was, and you may say that it may  
35           be correct or it's incorrect. But I interpreted  
36           it as that because recommendation 22 indicates  
37           that recommendation 10 applies once the \$3,000  
38           threshold is met, my understanding, though, is  
39           that for large cash transactions, the \$15,000  
40           threshold would apply, as provided for in  
41           recommendation 10, but I -- I read recommendation  
42           10 as it relates to a report in the case of  
43           suspicion of money laundering, so, in Canada, a  
44           suspicious transaction report, as perhaps having  
45           a \$3,000 threshold. So that the large cash  
46           transaction threshold would be \$15,000, according  
47           to the FATF, in terms of casinos, and for

William Gilmore (for Commission)  
Examination by Ms. Mainville, Counsel for Robert  
Kroeker

- 1 suspicious transactions, it may be 3,000. But I  
2 was unclear.
- 3 A That -- that would not be my interpretation off  
4 the top of my head. Now, one would have to look  
5 at past precedents of interpretation of FATF  
6 recommendations in the relevant reports. And  
7 what gives me particular cause for concern, I  
8 suppose, is your interpretation of there being a  
9 threshold of any kind for the triggering of a  
10 suspicious transaction report. It's always been  
11 my understanding that the FATF recommendations  
12 were such as to require suspicious transaction  
13 reports to be filed whenever there was a  
14 suspicion of money laundering within an obligated  
15 entity, and the fact that, in the example that  
16 you have given, that the suspicion might arise,  
17 as I understood it, at a lower level and  
18 therefore exempt one from reporting is not an  
19 interpretation which I am familiar with.
- 20 Q Well, that's helpful, because in fact that's  
21 consistent with Canada's position, which is that  
22 STR's -- suspicious transaction reports are filed  
23 irrespective any threshold --
- 24 A Yes.
- 25 Q [Indiscernible - overlapping speakers].
- 26 A That would be my understanding of the orthodox  
27 approach to the interpretation.
- 28 Q Okay, that's helpful, and then --
- 29 A [Indiscernible - break in recording].
- 30 Q And then perhaps, then, I can point out that in  
31 Canada, the large cash transaction threshold has  
32 been set by FINTRAC, by the Financial  
33 Intelligence Unit, at \$10,000 Canadian. And so I  
34 don't know if that -- to me, the 15,000 threshold  
35 appears to be the one recommended by the FATF.  
36 My understanding was that Canada had basically  
37 adopted a more robust threshold. And perhaps you  
38 know whether Canada is in compliance with that or  
39 not, and that may help --
- 40 A I'm not quite sure that I'm fully following this.  
41 But in respect of casinos, it had been my  
42 impression, from my reading of the -- of  
43 recommendation 22, that a specific threshold in  
44 respect of casinos, in the interpretative note,  
45 as you have said, at \$3,000 U.S. dollars, is the  
46 threshold which would be applicable. I hadn't  
47 looked -- sought to --

William Gilmore (for Commission)  
Examination by Ms. Mainville, Counsel for Robert  
Kroeker

1 Q Well, are you aware that --

2 A -- to interrelate that threshold with the -- the  
3 threshold of \$15,000 mentioned in recommendation  
4 10, addressing financial institutions.

5 Q Perhaps I can ask it this way, though, because  
6 I've not seen any indication that Canada is not  
7 in compliance with that particular  
8 recommendation, which would suggest that the  
9 \$3,000 threshold does not in fact apply, because  
10 as I've indicated, Canada's threshold is \$10,000.

11 A Well, if the threshold is \$10,000 and the  
12 requirement in recommendation 22 is \$3,000, then  
13 I think there's an issue. But I see -- I see the  
14 point that you're making. All I can say off the  
15 top of my head, and it is therefore very much  
16 subject to correction, is that I had not read the  
17 interaction of those two recommendations in that  
18 way, and my underlying assumption was, the \$3,000  
19 threshold in respect of casinos is a universal  
20 threshold.

21 Q And --

22 A In essence.

23 Q But are you aware of whether Canada has complied  
24 or not with that recommendation, or you don't  
25 have that off the top of your head?

26 A I don't have it at the top of my head, but I -- I  
27 could look at the -- at the report again, but  
28 it's not something that came staring out at me.  
29 And if I look at the customer due diligence  
30 factors underlying the rating of non-compliance,  
31 there is -- it says -- and this will be found at  
32 page 207 of the report, and it is factors  
33 underlying the rating of recommendation 22. This  
34 is the 2016 report:

35

36 With the exception of a limited set of  
37 transactions, the fixed threshold Canadian  
38 \$10,000 of cash financial transactions and  
39 casino disbursements exceeds that provided  
40 in the recommendation.

41

42 Q Right.

43 A So, yes. I'm afraid a wave of clarity is not  
44 overwhelming me at the moment, and for which I  
45 apologize.

46 Q Not a problem. I'm sure we'll collectively be  
47 able to figure it out subsequently. I might just

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

- 1 move on to the concept of a risk-based approach.  
2 A Indeed.  
3 Q And I understand that the FATF has endorsed such  
4 an approach to the effect of implementation of  
5 its recommendations. And in the 2019 report,  
6 which was called "Financial Action Task Force -  
7 30 Years" -- stated quite clearly that at the  
8 core of today's recommendations is the risk-based  
9 approach, which ensures that countries, as well  
10 as private sector, identify, assess and  
11 understand the risks they are exposed to and  
12 focus their resources on areas where the risks  
13 are highest. That essentially encapsulates the  
14 approach?  
15 A It does, indeed, yes.  
16 Q But -- yes?  
17 A I was going to say that that summary, seems to  
18 me, is a fair summary of the thrust of  
19 recommendation 1 in the FATF standards, and  
20 indeed, of immediate outcome 1. Both underline  
21 the importance of a risk-based approach and both  
22 indicate that it applies not just to countries,  
23 but indirectly also to obligated entities within  
24 those countries, including DNFBCPs, yes, so --  
25 Q But I take it -- I just want to be clear. This  
26 was not new from 2019, it featured certainly as  
27 the recommended approach as of 2012, and am I  
28 correct that there were in fact references to  
29 this approach prior to 2012 in the FATF report  
30 and recommendations?  
31 A Could I possibly ask you to repeat the question?  
32 There was a breakdown in my receiving the audio  
33 of your question --  
34 Q Certainly.  
35 A -- as it was being asked. Sorry about the  
36 inconvenience.  
37 Q Certainly. I just wanted to clarify that that is  
38 not new from 2019. It featured, as a  
39 recommendation as of 2012, and I believe, but  
40 correct me if I'm wrong, that there were in fact  
41 references to it even prior to 2012?  
42 A Yes, the issue of risk and high risk and low risk  
43 has been around for -- for quite a time. The  
44 difference, as it seems to me, in 2012, with the  
45 FATF recommendations, was the centrality that the  
46 risk-based approach was afforded in the  
47 recommendations. And that centrality was -- was

William Gilmore (for Commission)  
Examination by Ms. Mainville, Counsel for Robert  
Kroeker

1 new. And I would say it was fair to say that in  
2 the period between 2004 and 2012, there was a  
3 progressive focus within the FATF on the  
4 importance and utility of risk-based approaches  
5 within the AML, counter terrorism, financing  
6 structure.

7 Q And how, from the FATF's perspective, does that  
8 approach interact with certain prescriptive  
9 standards that are -- that feature in the  
10 standards or the recommendations, such as the  
11 threshold we just discussed, the various  
12 thresholds?

13 A Right. Well, I mean, could we wind that back  
14 just a bit and say that I think that the  
15 underlying general principle embodied in the  
16 risk-based approach is a pretty simple one, and  
17 that is that where there are higher levels of  
18 risk, enhanced measures should be taken to  
19 mitigate those risks. And where the risks are  
20 lower, simplified measures may be more  
21 appropriate. Subject, again, at the level of  
22 general principle to the understanding that low  
23 risk doesn't mean no risk. And so looked at in  
24 that high-level general way, what the risk-based  
25 approach is trying to indicate is that it has a  
26 utility in assisting countries with a focus of  
27 energy and resources and the like on issues which  
28 are of the greatest relevance, in the context of  
29 that country.

30 The way in which I would put it is that the  
31 risk-based approach is utilizable in a broad  
32 range of circumstances. For example, by  
33 supervisors, in deciding where to focus their  
34 supervisory efforts. But, where it comes to a  
35 prescriptive element of any of the  
36 recommendations, unless there is a carveout to  
37 the effect that the country has determined that  
38 the risk is so low in relation to a particular  
39 activity that it may be, for example, excluded  
40 from a particular recommendation, that a complete  
41 carveout is not the normal interpretation. That  
42 is, unless there is a specific treatment and  
43 exemption which one can take advantage of, a  
44 prescriptive rule remains, notwithstanding the  
45 risk-based approach would be I think my basic  
46 approach to the interpretation of such a  
47 recommendation.



1 Q Thank you for that. If I can take you now to the  
2 2016 mutual evaluation report of Canada.

3 A Indeed.

4 Q Which was filed as Exhibit 4, Appendix N. And we  
5 can pull it up perhaps on the screen if you don't  
6 have it before you.

7 A I've got bits of it.

8 Q Okay. I'm going to be referencing page 85, so  
9 perhaps if Madam Registrar --

10 A It would be helpful to have page 85 on the  
11 screen.

12 Q Okay.

13 A If that was possible, Madam Registrar.

14 Q Yes, that is Exhibit 4, Appendix N. So, at page  
15 85, paragraph 234.

16 A Madam Registrar, could I mention that I now have  
17 this in front of me in hardcopy, so I personally  
18 have no need for it on the screen.

19 Q Thank you.

20 A Paragraph?

21 Q 234.

22 A Yes.

23 Q And where it says:

24  
25 Awareness and implementation of reporting  
26 obligations vary greatly amongst the various  
27 sections. In particular: Casinos are  
28 adequately aware of their reporting  
29 obligations.  
30

31 A Indeed.

32 Q And the report goes on to highlight that, in  
33 contrast to the real estate sector, that appears  
34 generally unaware of the need to report certain  
35 suspicious transactions, that casinos -- if I  
36 continue reading -- sorry --

37  
38 The larger casinos detect suspicious  
39 transactions not only through front-line  
40 staff, but also through analytical  
41 monitoring tools developed at the corporate  
42 level on the transaction performed and on  
43 the basis of video-investigation in order to  
44 identify possible unusual behaviours (such  
45 as passing chips). They also report to  
46 FINTRAC suspicious transactions that were  
47 merely attempted.

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

1

2

A Yes.

3

Q And what I'd like to highlight is, in terms of  
4 the reference to analytical monitoring tools  
5 developed at the corporate level, would you agree  
6 with me that it's a significant asset in terms of  
7 countering money laundering to not simply have  
8 the casinos themselves make suspicious  
9 transaction reports to the Financial Intelligence  
10 Unit, but to have, in our case, the Lottery  
11 Corporation, who manages the casinos, handle that  
12 because they can take a broader look at  
13 suspicious conduct and they can look at  
14 additional data that they have from across all  
15 casinos in a jurisdiction?

16

A Hmm, I fear that you're taking me out of my  
17 comfort zone. My familiarity with the casino  
18 sector is -- is not extensive. I have looked at  
19 paragraph 234 a couple of times. And in looking  
20 at it, I was particularly struck, not just here,  
21 but elsewhere in the report, that within the  
22 DNFBP sector, the activities of land-based sort  
23 of bricks and mortar casinos appeared to have  
24 made a much more positive impression on the  
25 evaluators, generally speaking, than the  
26 impression that was created in the real estate  
27 sector or within those involved with the dealing  
28 in precious metals and stones.

29

What I can say is that the greater the  
30 number of tools that a particular sector in the  
31 instance that you've given me, the casino sector,  
32 the greater the level of sector-specific tools  
33 which are available for the monitoring of  
34 activity and the identification of suspicious  
35 activity, the better. And to the extent that  
36 such tools have been developed, to use the words  
37 of the report, at a -- at the corporate level,  
38 that is all to the good.

39

What impact that has or should have on the  
40 avenues for the specific reporting of suspicious  
41 transactions is not something which this  
42 paragraph triggered as a query in my -- in my own  
43 mind. And that may raise issues of background  
44 knowledge of the way in which suspicious  
45 transaction reporting is conducted within the  
46 casino sector, which is unknown to me. So I'd be  
47 beyond saying that it is a real positive that

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

1 sector-specific monitoring tools have been  
2 developed and are capable of better identifying  
3 suspicious transactions. That is unalloyed good.  
4 But how that good would, should or could be  
5 reflected in particular STR transaction reporting  
6 channels is not something that I would feel  
7 competent to comment on.

8 Q So you've just answered one of my next questions,  
9 which was about your level of comfort with the  
10 gaming sector and your ability to answer  
11 questions in respect of that. But --

12 A I have a very limited level of exposure to or  
13 expertise in the gaming sector. And these  
14 particular recommendations were not  
15 recommendations which fell within my remit in my  
16 general functions within the Moneyval committee  
17 which I was being questioned about in the course  
18 of yesterday. So I would say that my comfort  
19 levels in the gaming sector are particularly low.

20 Q Okay, fair enough, and -- and then so just let me  
21 know if you're able to answer this or comfortable  
22 answering this. There are some other indications  
23 in this 2016 report about casinos having a good  
24 understanding of the risks, contrary to other  
25 sectors, and about casinos being more compliant  
26 with reporting as compared to other non-financial  
27 businesses. And so I take it that Canadian  
28 casinos are faring well in the FATF's view as  
29 compared to other designated non-financial  
30 businesses and professions. Am I right in that  
31 assessment?

32 A That appeared to me, upon studying the Canadian  
33 2016 evaluation, to be a message emanating from  
34 the evaluators, the way that you have described,  
35 yes.

36 Q And indeed, in the summary, the more recent  
37 summaries which has just been filed as Exhibit  
38 20, so the summary of Canada's follow-up reports  
39 to the FATF, 2017 to 2019 --

40 A Mm-hmm.

41 Q -- am I right that the amendments to improve  
42 Canada's response to money laundering have been  
43 focused on a variety of things, new technologies,  
44 virtual currency, facilitating money laundering  
45 investigations, strengthening the federal  
46 police's capacity to investigate, FINTRAC and  
47 increased cooperation between intelligence and

William Gilmore (for Commission)

Examination by Ms. Mainville, Counsel for Robert Kroeker

1 law enforcement agencies, but what is not  
2 featured there at all are measures relating  
3 specifically to casinos?

4 A In my initial reading of the summary reports, the  
5 casino issue did not come out in light. I did  
6 note, however, in the -- in the first of these  
7 reports, reference to amendments entering into  
8 force to embrace online casinos.

9 Q Yes.

10 A But beyond that, I had not marked in yellow, as  
11 is my want -- any other casino-related  
12 indications. That, again, subject to correction,  
13 because I didn't have it particularly in mind. I  
14 would say only that this constitutes a Canadian  
15 Government summary of the Canadian Government  
16 position, and so I would say that this represents  
17 the view of the Government of Canada --

18 Q Correct.

19 A -- more than the FATF. But I have no reason to  
20 believe that the -- from the 2016 report, that  
21 the FATF would be looking out for a whole range  
22 of casino-related amendments and enhancements.

23 Q Correct, and that's fair, it would be the  
24 Canadian Government's apparent assessment of the  
25 priorities and what needs to be addressed, and  
26 indeed, the only reference to casinos, other than  
27 online casinos, in these summaries is, by my  
28 assessment, in the context of a federal and  
29 interprovincial and territorial meeting held in  
30 Vancouver in June 2019 where ministers  
31 responsible for money laundering attended and  
32 discussed the need for vulnerable sectors,  
33 including casinos, to effectively tackle money  
34 laundering. This is at pages 5 and 6.

35 A 5 and 6. Yes, I see the paragraph in question.

36 Q So, by my assessment, that's the only reference  
37 which was raised at an interprovincial  
38 ministerial meeting.

39 A Yeah.

40 Q Now, then are you in a position to advise in any  
41 way as to how Canadian casinos compare to others  
42 internationally, or is that also beyond your --

43 A Oh, no, no, that would be -- that would take me  
44 into even choppy waters. I do wish that I was  
45 better positioned to assist, but I fear that I am  
46 not.

47 Q Fair enough. The only thing, then, that I might

1 point out, if you can assist, is in the FATF's  
2 2009 report entitled "Vulnerabilities of Casinos  
3 and Gaming Sector" there is a list of a number of  
4 ways in which money laundering occurs in casinos  
5 around the world. I can take it to you if you  
6 want. It may not be necessary. I just wanted to  
7 make clear that those are clearly not specific to  
8 Canada. That report is one that is meant to give  
9 a lay of the land internationally?

10 A I have some familiarity with that report, and my  
11 understanding is that it was not written with any  
12 particular FATF member in mind, but was designed  
13 to be of general applicability. I believe that  
14 the Royal Canadian Mounted Police did have an  
15 input into the process of writing the report, but  
16 beyond that, I did not regard it as being  
17 jurisdiction-specific in any way.

18 Q And so indeed, several of these money laundering  
19 typologies may not apply to Canada, or may be  
20 well controlled for in Canada, that report  
21 wouldn't assist us in that respect, correct?

22 A That would be characteristic of all of the  
23 typologies reports, at least by the FATF over the  
24 years, at least those with which I have some  
25 familiarity. They tended to reflect the  
26 backgrounds and experiences of different  
27 countries around the world to indicate the kinds  
28 of methods which those abusing a particular  
29 sector have been known to utilize within the --  
30 the context of the discussions and analysis of  
31 that particular money laundering typology, rather  
32 than being specific to a particular jurisdiction.  
33 So, in that sense, the report you have -- you  
34 have highlighted would be, to my mind, from my  
35 familiarity with it, that would be my reading of  
36 it, as well.

37 Q Thank you for your assistance. Those are all my  
38 questions.

39 A Thank you very much, ma'am.

40 THE COMMISSIONER: Thank you, Ms. Mainville. Now, Mr.  
41 Comeau, for Transparency International.

42 MR. COMEAU: There.

43  
44 EXAMINATION BY MR. COMEAU:

45  
46 Q Good afternoon, or is it good evening there?

47 A It's very much good evening. Is it Mr. Comeau?

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 Q Yes, it is. Hi. So, I have a couple of  
2 questions, but I want to tread very carefully  
3 because I have not submitted any of the material,  
4 or some of the material, to you in advance,  
5 because I've just been retained in the last two  
6 days. And so it would be unfair to you, perhaps  
7 even to the Commission, to be asking you about  
8 things that you haven't had fair warning. So, at  
9 any time, if you are feeling uncomfortable about  
10 me asking you a particular area or about a  
11 particular document, please absolutely feel free  
12 and we can -- we can move from there.

13 So, what I really want to get at is, Table 1  
14 on page 19 of the 2015 Assessment of Inherent  
15 Risks of Money Laundering and Terrorist Financing  
16 in Canada. But before I was going to do that, I  
17 wanted to just frame it in a way so that we had  
18 some context of what we were talking about,  
19 because my concern here is with the very low risk  
20 rating that we have for -- for tax and customs-  
21 related money laundering. And so I guess I'll  
22 start with just basically talking about the  
23 magnitude of money laundering in the world. We  
24 all know how difficult to impossible that is.  
25 But there have been a couple of very well-known  
26 estimates that have been made. The first, I  
27 believe, of those -- the two that I'm going to  
28 refer to was the estimate made by the IMF in 1998  
29 in which Michel Camdessus, then President -- or  
30 Managing Director, rather -- said that,  
31 "Estimates of the present scale of money  
32 laundering transactions are almost beyond  
33 imagination. Two to five percent of global GDP  
34 would probably be the consensus range." Are you  
35 familiar with that consensus range?

36 A I'm familiar with that statement.

37 Q Sure. Go ahead.

38 A But I have not -- I have not, in my academic  
39 research, sought to address questions of the  
40 global magnitude of either criminal proceeds or  
41 of money laundering. I occasionally see such  
42 matters, but not being a criminologist by  
43 training, I have taken the view that, one, such  
44 estimates are extremely difficult to make, and  
45 indeed, the Financial Action Task Force, from  
46 memory, at one stage many years ago, sought to  
47 quantify these issues, and gave up, is my -- is

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 my memory. My rather more practical approach or  
2 personal approach is to say whatever the sum is,  
3 it's probably too big, and that -- that we have a  
4 problem, is -- is, to me, self-evident.

5 Q Thank you very much. There was another attempt,  
6 and this one was quite an in-depth research for  
7 this one, and I'm referring to the UNODC  
8 "Estimating Illicit Financial Flows Resulting  
9 from Drug Trafficking and Other Transnational  
10 Organized Crimes" research report dated 2011.  
11 And that one was not only based on many metadata  
12 attempts to quantify money laundering, but also,  
13 more specifically, they were -- they were looking  
14 at, for them, the cocaine one in very much depth.  
15 Are you roughly familiar with that -- the  
16 existence of that?

17 A I was made aware of its existence at 4:34 this  
18 afternoon, UK time, and when I was advised that  
19 someone would be minded to raise this particular  
20 issue, I promptly read the executive summary, but  
21 beyond that, I have not had the opportunity to  
22 digest its contents.

23 Q Fair enough. I, in fact, should have been more  
24 specific, because I really just wanted you to  
25 focus on the one paragraph, and in particular,  
26 the one sentence. So they go on to say -- they  
27 talk about the consensus range of two to five  
28 percent formerly stated by the IMF did indeed  
29 come within what their research showed. They hit  
30 3.6 percent for that particular year. Even  
31 though the report was in 2011, they were talking  
32 about 2009. And in there, they said that the  
33 data suggests that the best estimates are  
34 situated at the lower end of the range. They're  
35 talking about transnational money laundering.  
36 But this, to some extent, a question of  
37 methodology.

38  
39 If tax and customs-related money laundering  
40 activities were included in the calculation,  
41 the results would move towards -- and  
42 perhaps exceed -- the upper end of the  
43 consensus range.

44  
45 At that time, as you talked about earlier in your  
46 testimony, money laundering didn't include all  
47 indictable offences, and many countries had

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

- 1 different -- different definitions of money  
2 laundering; is that correct?
- 3 A Definitions of money laundering, not so -- so  
4 much, in the sense that the -- the core  
5 requirements internationally, both in terms of  
6 the FATF standards and in international treaty  
7 practice, have tended to revolve around the 1988  
8 UN Convention definition of "money laundering,"  
9 although the term is not used, in Article 3.1(b),  
10 and that has been taken forward not only within  
11 the FATF, but in subsequent UN multilateral  
12 treaty instruments. Where the difference has  
13 been, in my experience, has been in the range of  
14 underlying predicate offences for money  
15 laundering, and there --
- 16 Q [Indiscernible - overlapping speakers].
- 17 A -- there was a very significant variation between  
18 -- between countries, until they started giving  
19 more general effect to the 2003 amended  
20 recommendations of the -- of the task force. And  
21 that has a very lengthy list of categories of  
22 serious offences which must be treated as  
23 predicate offences for money laundering, but that  
24 states may go beyond that minimum. And it has  
25 taken a number of countries longer than -- than  
26 others to fully come into line with that. But to  
27 that was added certain tax offences in 2012, for  
28 the first time, at the FATF level, and it may be  
29 that that is what you're, in part, at least  
30 alluding to.
- 31 Q Exactly, and -- and thank you for that clarity on  
32 that issue. I very much appreciate it. And so  
33 the point that the UNODC is making in their  
34 report in that sentence is that if you include  
35 tax offences, as we do in Canada under s.  
36 462.3(1) of our *Criminal Code* -- we include  
37 basically indictable offences, which include tax  
38 offences -- those, they're suggesting that two to  
39 five percent range of money laundering would be  
40 closer to the five percent, or perhaps even  
41 exceeding. But we don't need to argue that. I  
42 think your normal point was it's a massive  
43 number. Is it fair just to say that, it's an  
44 extremely large number?
- 45 A However you -- my underlying assumption is that  
46 however you calibrate it, the -- the total volume  
47 or value of funds available for money laundering,



William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 in other words, criminal proceeds available for  
2 laundering, would be very large. It would not be  
3 as large as criminal proceeds, per se, because  
4 not all criminal proceeds will eventually be  
5 laundered.

6 Q Right.

7 A Unless you take a very wide working definition of  
8 "money laundering" for these purposes. And of  
9 course many of the criminal offences in countries  
10 around the world include a whole range of --  
11 include a broad range of prohibited conduct which  
12 they treat as money laundering, including  
13 acquisition, possession and use-type offences,  
14 which perhaps the ordinary person on the street  
15 might not consider to be money laundering as  
16 such. So one has to be quite careful with the  
17 terminology here. But certainly looked at in  
18 terms of criminal or tainted proceeds, the sum  
19 would be huge, yes.

20 Q And so if you tied -- thank you for that, as  
21 well. The point that struck me, and I'm  
22 wondering if it also struck you, in reading the  
23 sentence, "If tax and customs-related money  
24 laundering activities were included in the  
25 calculation, results would move towards -- and  
26 perhaps exceed -- the upper end of the  
27 consensus," and they said that immediately after  
28 they had said the best estimates are situated at  
29 the lower end of the range. To me, that suggests  
30 if you're taking it from the lower end, and then  
31 you add in tax offences, and it brings it to the  
32 higher end, it tells me that tax offences as a  
33 concept of money laundering may be the largest  
34 category of all?

35 A I think you're taking me beyond my comfort and  
36 information level. I don't -- as a consequence  
37 of having had the opportunity only to briefly  
38 have a view of the executive summary, I'm not  
39 familiar with the methodology which was -- which  
40 was utilized and I'm not, by background, somebody  
41 who would be in the position to gauge the  
42 adequacy or otherwise of that methodology, so I  
43 think I must refrain from expressing an opinion.  
44 But, quite obviously, the broader the categories  
45 of offences for money laundering, the broader the  
46 categories of profit-generating offences and the  
47 inclusion on tax offences will have the necessary

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

- 1           impact of extending the concept of how much in  
2           the way of tainted funds are flowing through  
3           national or international systems, but the  
4           quantification of it is not something that I  
5           would feel confident in commenting on.
- 6        Q     Thank you very much for that.  Let's go to Table  
7           1 of page 19 of the 2015 assessment, "Inherent  
8           Risks."
- 9        A     Can I ask Madam Registrar if it would be possible  
10           to display this on the screen?  Because I do not  
11           have it at hand.
- 12       MS. LATIMER:  If it assists, Madam Registrar, it's  
13           Exhibit 3 and Appendix B.
- 14       THE REGISTRAR:  Thank you.  Mr. Comeau, did you say  
15           page 15?
- 16       MR. COMEAU:  Page 19.
- 17       THE REGISTRAR:  19.  Thank you.
- 18       MR. COMEAU:
- 19       Q     And so if you look at Table 1 on page 19.
- 20       A     I have it in front of me.
- 21       Q     Terrific.  And you will see the different  
22           categories of ratings.  And in -- there's very  
23           high threat, then high threat rating, then medium  
24           threat rating, and then low.  Almost -- a  
25           significant majority of those being rated are in  
26           the first two categories.
- 27       A     Indeed.
- 28       Q     And in the medium threat rating, along with  
29           firearms smuggling, loan sharking and extortion,  
30           is tax evasion and tax fraud?
- 31       A     I see that, yes.
- 32       Q     Given the parameters above, dealing with how  
33           these assessments are made -- so it looks at the  
34           four criterion -- sophistication, capability,  
35           scope and proceeds of crime.  I'm going to start  
36           from the bottom:
- 37
- 38                   Proceeds of Crime:  the magnitude of the  
39                   estimate of dollar value of the proceeds of  
40                   crime being generated annually from the  
41                   profit-oriented crime.
- 42
- 43       A     Indeed.
- 44       Q     The suggestion from the UNODC -- where I went  
45           through before -- was that you may not find a  
46           larger category of money laundering in the world  
47           than tax evasion, tax crime, yet it's in one of

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 the very lowest categories. Number 1 -- let's go  
2 up to number 1:

3  
4 Sophistication: the extent to which the  
5 threat actors have the knowledge, skills and  
6 expertise to launder criminal proceeds and  
7 avoid detection...

8  
9 So are they sophisticated actors, and I believe  
10 that they're talking about "sophisticated" in the  
11 concept of money laundering. If you look at the  
12 explanation on page 26 of the report, if we can  
13 go to that. Can that be put up on the screen?  
14 This is the response that I see to why it was  
15 given such a low rating --

16 THE COMMISSIONER: I don't think we're there yet, Mr.  
17 Comeau. Just if you'd wait until we get the page  
18 up.

19 MR. COMEAU: Right. It was page 26.

20 THE COMMISSIONER: All right, there we are.

21 MR. COMEAU:

22 Q Do you want a moment to read that?

23 A Yes, please.

24 Q Sure.

25 A Yes, I've read that quickly.

26 Q So one of the things that they're talking about  
27 here is tax evasion in Canada; is that correct?

28 A That seems so, yeah.

29 Q Yes. They don't seem to be talking about tax  
30 evasion being laundered in Canada, i.e. tax  
31 evasion where the predicate crime was committed  
32 outside of Canada, but the proceeds were  
33 laundered in Canada. Does that strike you as  
34 fair?

35 A That seems, on quick reading, to be fair, yeah.

36 Q Do you believe that that is a properly -- proper  
37 way to assess the amount of potential money  
38 laundering of tax evasion proceeds in Canada?

39 A In and of itself, it would strike me as  
40 problematic perhaps, but what I don't know, for  
41 example, in relation to the assessment of this  
42 particular paragraph is what the coverage of tax  
43 issues, if any, was in the inherent money  
44 laundering vulnerability as opposed to threat,  
45 the section elsewhere, and indeed, how it was  
46 viewed in relation to inherent money laundering  
47 risk within the same report.

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1                   So looked at in isolation, I can -- I can  
2                   see your point, but I do not -- I mean, I've read  
3                   the report a couple of times, and I didn't have  
4                   the tax issue at the forefront of my mind in  
5                   doing so, for which I apologize. But these  
6                   issues tend to find some coverage in different  
7                   parts of the report, and putting -- and if that  
8                   is so -- in relation to tax evasion and tax  
9                   fraud, then I'm not in a position to recall all  
10                  of that, so it is so for many of the other issues  
11                  which -- which are raised, that I'd be hesitant  
12                  to draw a firm conclusion here. But in the terms  
13                  in which you have put it to me, this is a -- a  
14                  reference to -- apparent reference to the quantum  
15                  of tax evasion and tax fraud in Canada, and does  
16                  not address, in that paragraph at least,  
17                  extraterritorial aspects of that problem.

18                Q       Thank you. Now, given that in Canada none of the  
19                    provinces or territories and -- none of the  
20                    provinces or territories require disclosure of  
21                    beneficial ownership of companies, and none of  
22                    the provinces or territories require disclosure  
23                    of land, purchase of land, would it not be the  
24                    case that -- that tax evasion proceeds of crime  
25                    from other countries, as well as in Canada, would  
26                    not be particularly difficult to launder in  
27                    Canada?

28                A       Well, let me -- let me answer that in my -- in my  
29                    own terms, which -- which would be as follows,  
30                    that it is clear from not just the 2016 mutual  
31                    evaluation report on Canada, but the 2008 report,  
32                    that Canada has -- is perceived to have a  
33                    significant problem in relation to the  
34                    transparency of legal persons and legal  
35                    arrangements. This was the area in which Canada  
36                    secured low ratings, both as a matter of  
37                    technical compliance and was the -- from memory  
38                    -- the area -- the only area in which the report  
39                    indicated that major improvements in  
40                    effectiveness were required. So the beneficial  
41                    ownership and transparency in relation both to  
42                    legal persons and legal arrangements is an  
43                    identified problem.

44                    In addition, I think it fair to say, in the  
45                    2016 report, that if one goes to the IO-7 on the  
46                    investigation, prosecution and conviction rate  
47                    for money laundering, one of the conclusions

1 drawn by the evaluators was that the rarity of  
2 bringing corporate criminal prosecutions against  
3 legal persons in Canada was perceived as an issue  
4 given the high identified risk of the abuse of  
5 legal persons in Canada in the 2015 report, which  
6 we have onscreen. And so I would say that taking  
7 both of those together, there is some obvious  
8 merit in the -- the threads of analysis that you  
9 have presented.

10 Q Thank you for that.

11 A There's an obvious issue here.

12 Q The 2015 risk assessment also says virtually  
13 nothing about trade-based money laundering. Am I  
14 correct in that?

15 A I don't recall a significant discussion of trade-  
16 based money laundering.

17 Q And in 2006, FATF stated, if I may quote them:

18  
19 As the standards applied to other money  
20 laundering techniques become increasingly  
21 effective, the use of trade-based money  
22 laundering can be expected to become  
23 increasingly attractive. Moreover, the  
24 ability of organized crime and terrorism  
25 financiers to substitute one method of  
26 money laundering for another suggests that  
27 a country's aggressive response to only  
28 financial system money laundering and cash  
29 money laundering may ultimately do little  
30 to reduce the overall volume of money  
31 laundering.

32  
33 Do you agree with that statement?

34 A As I -- as a statement, it seems to me relatively  
35 unexceptional. I think what I would say here,  
36 though, is going back to the point that one has  
37 previously made, is that trade-based money  
38 laundering, in my limited exposure to it, as a  
39 concept, is often -- in fact, most frequently  
40 carried out as a result of the abuse of corporate  
41 entities, and so to the extent that that is true,  
42 and to the extent that the abuse of corporations  
43 and other legal persons for money laundering  
44 purposes is identified as -- as a problem, we --  
45 there may be an issue here of -- if the -- the  
46 mechanism through which trade-based money  
47 laundering frequently takes place, is the abuse

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 of corporations and if the abuse of corporations  
2 has been identified as a problematic issue, but  
3 I'm not sure necessarily that the -- the  
4 distinction which you draw is as acute as perhaps  
5 you seem to be suggesting. But that's an  
6 alternative potential prism through which to look  
7 at this, which comes to mind.

8 Q Well, to give you an example, with just an  
9 individual --

10 THE COMMISSIONER: Mr. Comeau, I'm going to interrupt  
11 just for a sec. Are you finished with Exhibit 3,  
12 Appendix B on the screen, or do you wish that  
13 still posted?

14 MR. COMEAU: No, that's fine. You can take that one  
15 away. Thank you very much.

16 THE COMMISSIONER: Thank you.

17 MR. COMEAU:

18 Q But trade-based money laundering generally is  
19 done with companies. The problem, of course, is  
20 the way that shipping works today. You have a  
21 whole bunch of products being shipped from one  
22 country to another, and often they share -- the  
23 container is filled with many items that are sent  
24 from multiple, multiple senders. And so it is  
25 virtually impossible, on a risk-based method that  
26 we have now, for the banks, or for the shipping  
27 companies to be getting -- tracking beneficial  
28 ownership of those senders, often when they're a  
29 one off time, and often that's not even their  
30 client. In fact, the client is -- the shipping  
31 company receives it from multiple clients, puts  
32 it all into one manifest, and ships it. And so  
33 you have a huge hole in the system in which all  
34 of those goods are being sent, and there is no  
35 checking of beneficial ownership as a regular  
36 matter. The banks can't do it. All they see is  
37 a dollar amount come in. They don't even know  
38 what -- what's being shipped or what's going on.  
39 The shipping companies can't do that because they  
40 have literally thousands of them every single  
41 day.

42 A Yes.

43 Q So -- so one of the -- so trade-based money  
44 laundering wouldn't be captured in that scenario,  
45 would it? It's not merely a matter of a company  
46 being captured on a risk-based system. Does that  
47 make sense?

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 A I mean, there's -- there's no doubt that trade-  
2 based money laundering, in the limited  
3 circumstances in which I've been exposed to  
4 looking at it, which was primarily in the context  
5 of the second mutual evaluation of Israel,  
6 presents significant law enforcement challenges,  
7 the extent to which those law enforcement  
8 challenges would be minimized by a more robust  
9 level of compliance with the international FATF  
10 standards on beneficial ownership of legal  
11 persons and arrangements is something which I'm  
12 not in the position to speculate on, because I  
13 don't have a law enforcement background. But one  
14 would hope that the -- the greater the level of  
15 transparency of the beneficial ownership of  
16 corporate and other entities, the -- the greater  
17 the opportunity for law enforcement  
18 investigations to -- to bear fruit in this and  
19 other areas.

20 Q I had wanted to submit into the record -- I don't  
21 believe I will be able to -- I can ask the  
22 Commission -- but in 2018, I submitted a brief to  
23 the -- to the FINA Standing Committee on Money  
24 Laundering, dealing with trade-based money  
25 laundering. And it goes into this issue in  
26 significantly more detail. It actually proposes  
27 one thing that I haven't read elsewhere. To get  
28 over the problem of not being able to have people  
29 searching every single client every single day  
30 when there are different clients walking in every  
31 day, and what you can do is merely add one more  
32 box to the bill of lading or manifest, and it  
33 just says, is there commonality of beneficial  
34 ownership between the sender and the receiver.  
35 That's all.

36 And so whoever is shipping anything around  
37 the world, they just have to tick a box. And if  
38 they say yes, then organizations like Canada  
39 Border Services can red flag that and say, ah, is  
40 there mispricing on this? They're sending these  
41 sandals, they're charging \$50,000, but they're  
42 really \$150,000 sandals. They've just, through  
43 trade-based money laundering, laundered \$100,000  
44 to, let's say the perpetrator of predicate crime  
45 -- predicate crime, he's just enriched his  
46 brother in Canada by \$100,000. Never gone  
47 through the banks, hasn't done anything. And the

William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

- 1 really sad part about this, or dangerous part to  
2 Canada, is that if his brother or nephew or  
3 related person on the other side in Canada can  
4 receive those goods for 50,000 when everyone else  
5 is paying a hundred thousand, he can sell them  
6 for a hundred thousand and make a lot of money  
7 and put his Canadian honest competitors right out  
8 of business.
- 9 THE COMMISSIONER: Mr. Comeau, I think you're sort of  
10 straying back into the area of either making  
11 argument or giving evidence. I think you have to  
12 confine yourself to asking questions of this  
13 witness in the area in which he has already  
14 testified.
- 15 MR. COMEAU: I apologize for that.
- 16 Q And so, Professor Gilmore, I put it to you, has  
17 that, to your knowledge, ever been raised in  
18 international circles or with FATF, or have you  
19 heard of such a "tick your box" for trade-based  
20 money laundering?
- 21 A That is not a suggestion I've heard before, but I  
22 -- as I hope I've indicated, given my background,  
23 the typologies of money laundering involving  
24 trade-based abuses is not something which has  
25 been central to any of my activities. Though I'm  
26 aware from general reading in the subject area  
27 and from some exposure in mutual evaluation  
28 context, that it can be a significant problem.  
29 But the solution to the problem, the one that you  
30 have raised, is not one that I am aware of having  
31 been previously raised, let alone agreed, but all  
32 of that is subject to correction by those more  
33 expert than myself.
- 34 Q Okay, and I just had one final point to ask you  
35 about. It's going back earlier to the IMF  
36 consensus range of the two to five percent of  
37 world GDP. That was made in 1998. And if you  
38 use -- have you, at the same time when you heard  
39 the two to five, have you also heard the numbers  
40 \$590 billion U.S. to U.S. \$1.5 trillion as the  
41 range, rather than just the two to five?
- 42 A No, but I mean, it would be a relatively easy  
43 thing if you had good global GDP figures to do  
44 the math, but I haven't.
- 45 Q I sent that to the committee, but it doesn't  
46 really matter.
- 47 A I also clicked on that at about 4:42 UK time, and



William Gilmore (for the Commission)  
Examination by Mr. Comeau, Counsel for the  
Transparency International Coalition

1 I did see the trajectory of the pre-COVID-19  
2 graph on GDP.

3 Q So the point there is that number is the 1998  
4 number, to no one's surprise. What is a surprise  
5 is if we click on FINTRAC's website and ask --  
6 very front page, you click on the term "Money  
7 Laundering," FINTRAC tells us that - I will quote  
8 -- FINTRAC says that:  
9

10 The scope of criminal proceeds from money  
11 laundering is significant. It's estimated  
12 at some \$590 billion to \$1.5 trillion U.S.  
13 worldwide each year.  
14

15 Do you believe that it's possible that that  
16 number that FINTRAC has is about 20 years out of  
17 date?

18 A I'm -- you're taking me well beyond my comfort  
19 level here. I think I'm content to say that I  
20 agree with you, in our earlier discussion, that  
21 whatever the quantification of global criminal  
22 proceeds is, it's very high.

23 Q Very good.

24 A Beyond that, I would be going beyond my limited  
25 levels of competence.

26 Q Thank you.

27 A And which I apologize.

28 Q Professor Gilmore, I want to thank you. Those  
29 are all the questions I have. I also want to  
30 thank the Commission for their indulgence, and  
31 Professor Gilmore, your indulgence with these  
32 very late documents. I apologize. As I  
33 explained, I was just retained, so it was the  
34 best I could do in the short time. Thank you  
35 very much for answering my questions. I  
36 appreciate it.

37 A Thank you.

38 THE COMMISSIONER: Thank you, Mr. Comeau. Ms.

39 Latimer, do you have anything in re-examination?

40 MS. LATIMER: No, thank you.

41 THE COMMISSIONER: All right. Professor Gilmore, on  
42 behalf of the Commission, I would like to extend  
43 my thanks and gratitude to you. You've obviously  
44 brought a wealth of experience and expertise to  
45 an exceedingly complicated subject and helped us  
46 to understand the contours and the landscape in  
47 which the -- the Financial Action Task Force and

1           its related bodies work. It will be of great  
2           benefit to the Commission as we move forward.  
3           So, thank you very much for your time, your  
4           attention and care, and for sitting, for you,  
5           late in to the evening. You may now be excused.  
6    A    Thank you. It's been a privilege to participate.  
7    THE COMMISSIONER: Thank you.

8  
9                               (WITNESS EXCUSED)

10  
11   THE COMMISSIONER: I take it that we've come to the  
12           end of our evidence for today, Ms. Latimer?  
13   MS. LATIMER: Yes, we have.  
14   THE COMMISSIONER: All right, thank you. We will  
15           adjourn, then, until tomorrow at 9:30.

16  
17                   (PROCEEDINGS ADJOURNED TO JUNE 5, 2020, AT 9:30  
18           A.M.)  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47