

**PROCEEDINGS AT HEARING  
OF  
MAY 6, 2021**

**COMMISSIONER AUSTIN F. CULLEN**

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**May 6, 2021**  
**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 8:00 A.M.)**

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

THE COMMISSIONER: Thank you, Madam Registrar.

Yes, Mr. Martland.

MR. MARTLAND: Thank you, Mr. Commissioner. Today's witness is Dr. Jason Sharman.

Madam Registrar, if the witness could please affirm.

**JASON SHARMAN, a witness  
called for the  
commission, affirmed.**

THE REGISTRAR: And please state your full name and spell your first name and last name for the record.

THE WITNESS: My full name is Jason Campbell Sharman. The first name is J-a-s-o-n. Sharman is S-h-a-r-m-a-n.

THE REGISTRAR: Thank you.

MR. MARTLAND: Thank you. Madam Registrar, if we could please display the witness's CV.

**EXAMINATION BY MR. MARTLAND:**

Q Dr. Sharman, as the CV comes up on screen, it

1                   will be familiar to you. I'll start by asking,  
2                   I hope, a simple question. Do you recognize  
3                   that as being your CV?

4           A     Yes, I do.

5           MR. MARTLAND: Mr. Commissioner, I'll ask that that  
6                   please be marked the next exhibit.

7           THE COMMISSIONER: All right. That will be 958.

8           THE REGISTRAR: Exhibit 958.

9                   **EXHIBIT 958: Curriculum Vitae of Jason Sharman**

10          MR. MARTLAND:

11          Q     As the TV displayed on the screen indicates,  
12                   sir, you hold a number of titles at Cambridge  
13                   University. The Sir Patrick Sheehy professor of  
14                   international relations. You have a  
15                   professorial fellow role at King's College,  
16                   Cambridge, and head of department with politics  
17                   and international studies within the University  
18                   of Cambridge. Do I have that accurately?

19          A     Yes.

20          Q     You've also in your previous capacities in  
21                   Australia served as a professor for a decade at  
22                   Griffith University, prior to that with the  
23                   University of Sidney as a post-doctoral fellow  
24                   and lecturer and then for a few years before  
25                   that worked at the American University in

1 Bulgaria?

2 A Yes.

3 Q And by way of background and your education, you  
4 have both a PhD and masters from the University  
5 of Illinois at Urbana-Champaign and before that  
6 a BA honours history and political science at  
7 the University of Western Australia?

8 A Yes.

9 Q And I won't spend a lot of time reading through  
10 it, but as I count the tally of the books that  
11 are identified that you've written on your CV,  
12 it's close to a dozen books, a number of those  
13 books selected for awards and prizes?

14 A Yes.

15 Q And of perhaps some relevance to the work we're  
16 doing here, I note the first most recent title  
17 that's identified here, *Outsourcing Empire: How*  
18 *Company-States Made the Modern World* from  
19 Princeton University Press. A few titles down,  
20 *The Despot's Guide to Wealth Management: On the*  
21 *International Campaign against Grand Corruption*  
22 from 2017. Those are two of the books that  
23 you've written or coauthored?

24 A Yes.

25 Q If we go to the next page, about two down from

1                   the top, *The Money Laundry: Regulating Criminal*  
2                   *Finance in the Global Economy*. Down a few more  
3                   titles, coauthoring the book *Corruption and*  
4                   *Money Laundering: A Symbiotic Relationship*.  
5                   Again, some of your titles?

6                   A     Yes.

7                   Q     And within the list of journal articles I won't  
8                   spend time on it, but on my math about 50  
9                   journal articles and in addition to that  
10                  identified in the CV about a dozen book chapters  
11                  all part of quite a corpus of written work that  
12                  you've produced on a number of topics, including  
13                  corruption and money laundering?

14                 A     That's correct.

15                 MR. MARTLAND: Madam Registrar, if we could turn to  
16                  page 8, please, of the document.

17                 Q     On page 8, having identified the book chapters  
18                  as well as major grants, there's then a list of  
19                  awards and prizes. One of the prominent one,  
20                  because it's a highly select membership, you're  
21                  a fellow of the British Academy?

22                 A     Yes.

23                 Q     If we go over one more page. And at the bottom  
24                  of page 9 you list some of the different hats  
25                  that you've worn or roles that you've served in,

1 I suppose, as a consultant in various  
2 international capacities. So at the very bottom  
3 of that page with the World Bank and the UN  
4 Office on Drugs and Crime, the Stolen Assets  
5 Recovery Initiative. You've been engaged with  
6 that body, I think, on a number of occasions.

7 A That's correct.

8 Q At the top of the next page we see work with the  
9 Kenyan Ethics and Anti-Corruption Commission,  
10 giving expert opinion evidence in the US  
11 District Court in Massachusetts. And then  
12 through the page and without taking you through  
13 detail, but it's quite a trip around the globe:  
14 Norway, Panama, the US, Philippines, Fiji,  
15 France and other points.

16 A That's correct.

17 Q And I think -- I wonder if I could ask you as a  
18 fairly general question. I take it from my  
19 understanding of the work that you've done  
20 certainly a decent component of that would be  
21 traditional or classic researched-based  
22 analytical writing on a host of policy issues.  
23 We've also -- maybe it's a little spy-like to  
24 say that it's undercover detective work, but  
25 you've actually gone out and done effectively

1                   investigative work that is probably quite  
2                   different from library-based work. Is that fair  
3                   to say?

4           A        [Indiscernible] shopping for -- seeing whether  
5                   it's possible to buy anonymous shell companies  
6                   in violation of international standards aiming  
7                   to prohibit such shell companies.

8           Q        And maybe you can tell the Commissioner the  
9                   nature of that work and what it was you were  
10                  seeking to do on the occasions where you've  
11                  engaged in that line of investigation.

12          A        Certainly. So international standards mandate  
13                   that authorities must be able to look through  
14                   shell companies to find the real or the  
15                   beneficial owner, but that depends upon those  
16                   who set up and sell shell companies, collecting  
17                   that information in the first place. And rather  
18                   than just reading regulations or legislation, I  
19                   wanted to know whether in fact it was possible  
20                   to obtain a shell company without disclosing my  
21                   ID.

22                               And so as part of that effort, first off  
23                   individually and then in combination with two  
24                   other researchers, we went on something of a  
25                   mystery shopping expedition where we made



1 thousands and thousands of solicitations for  
2 anonymous shell companies to so-called corporate  
3 service providers based in pretty much every  
4 country in the world, around about 170, to see  
5 in practice whether they were willing to sell us  
6 shell companies, no questions asked, without us  
7 having to prove our ID, prove our identity. And  
8 in some cases I went through and actually then  
9 bought shell companies and set them up and set  
10 up corresponding bank accounts.

11 Q And there's a few points in your report -- and  
12 we'll turn to the report in a moment -- you draw  
13 on some of that work to give us a perspective on  
14 it, but maybe to give us the plot spoiler at a  
15 general level, what sorts of conclusions or  
16 insights did you gain from embarking in that  
17 mystery shopping, as you describe?

18 A Very broadly, there were three conclusions. One  
19 is that in principle anonymous shell companies  
20 should be unavailable, but in practice they are  
21 quite easily available because many  
22 jurisdictions in fact -- it's possible remotely  
23 to buy such shell companies. So roughly a  
24 quarter of the replies that we got didn't ask  
25 for sufficient ID and about another quarter

1                   didn't ask for any identity at all when people  
2                   were offering to sell us a shell company, in  
3                   effect making the shell companies untraceable or  
4                   anonymous.

5                   Secondly, that both corporate service  
6                   providers and banks are very much insensitive to  
7                   risk in that some of our approaches were  
8                   deliberately high risk, designed to raise red  
9                   flags through suspicious features normally  
10                  associated with money launderers or corrupt  
11                  officials. Some were very low-risk approaches.  
12                  What should have happened is that providers and  
13                  banks should have been much more worried by and  
14                  much more discerning and much more inquisitive  
15                  about the -- and much more likely to reject the  
16                  high-risk approaches. In fact that didn't  
17                  happen. It made almost no difference.

18                  And finally that in fact some of the  
19                  countries that did the worst job of applying  
20                  international standards on beneficial ownership  
21                  of shell companies were the very same countries  
22                  that had drawn up the standards in the first  
23                  place. And particularly -- in particular,  
24                  English speaking members of the OECD did a  
25                  particularly poor job of applying the very same

1 international standards on corporate  
2 transparency they had drawn up and many of the  
3 jurisdictions commonly stigmatized as tax  
4 havens, contrary to conventional wisdom, were  
5 actually some of the most compliant in applying  
6 transparency rules to those looking to form  
7 shell companies.

8 MR. MARTLAND: Madam Registrar, we can take down the  
9 display of the CV.

10 Q Dr. Sharman to pick up on that last point, that  
11 does seem a little counterintuitive because one  
12 might expect, just as happens with -- I'm  
13 thinking of the example of flag states for ships  
14 where you see an untold number of Liberian-  
15 registered ships, which doesn't make a lot of  
16 sense, on the Pacific coast of North America,  
17 for example, except that there's a forum  
18 shopping dynamic there.

19 And I wonder if you can just expand on that  
20 comment that it seems you sort of describe this  
21 sort of, as I hear you, commonwealth established  
22 English-speaking democracies, et cetera, that  
23 may nonetheless perform quite poorly in those  
24 examples that you've described of mystery  
25 shopping and testing out how easy or hard it is

1 to register a company.

2 A I think there are two reasons in particular. I  
3 think from the best possible motives, countries  
4 like the US, Britain, Canada, Australia and New  
5 Zealand have sought to make it easy to form  
6 companies. I think this is perfectly sensible.  
7 It makes life easy for business people there.  
8 Of course most companies formed are used for  
9 entirely legitimate purposes and there are good  
10 reasons why you would want to make forming a  
11 company cheap and easy for legitimate business  
12 purposes.

13 Unfortunately if you make it cheap and easy  
14 for legitimate business purposes, that also  
15 makes it easy for criminals. The second  
16 dynamic, I think, is that tax havens have been  
17 under severe international outside pressure for  
18 20 years, whereas countries that are in clubs  
19 like the OECD or the Financial Action Task Force  
20 have been under much less pressure and as a  
21 result they have had less incentive to reform  
22 and tighten up standards and particularly the  
23 enforcement of those standards.

24 MR. MARTLAND: Madam Registrar, if we could please  
25 bring up the report.

1 Q And I'll have that on display there,  
2 Dr. Sharman. Do you recognize that as being as  
3 it's identified as, the report that you've  
4 authored for this commission?

5 A Yes. Yes.

6 MR. MARTLAND: Mr. Commissioner, if I could ask that  
7 the report please be marked as exhibit -- I  
8 think 959.

9 THE COMMISSIONER: Yes, very well.

10 THE REGISTRAR: Exhibit 959.

11 **EXHIBIT 959: GPEB Report of Findings - Failure**  
12 **to Report - Paragon Gaming (dba) Edgewater**  
13 **Casino - October 4, 2010**

14 MR. MARTLAND:

15 Q And as we see there, this is a report that was  
16 produced at the request of this commission for  
17 the purpose of helping to give us some insight  
18 for our work, professor; is that fair?

19 A Yes.

20 Q To give us first the context for what will  
21 follow, but without leaping ahead to all the  
22 detail of it, you write in the first paragraph  
23 that the report broadly addresses three areas.

24 "First, it takes a comparative approach to  
25 assessing money laundering threats,

1 current anti-money laundering (AML)  
2 policy, and potential future improvements  
3 to this policy. Second, it examines  
4 threats and current and potential  
5 responses to the laundering of the  
6 proceeds of foreign corruption offences."

7 And maybe I'll just pause there to underline the  
8 words "foreign corruption." That's really the  
9 focus of that section of the report is on, I  
10 suppose, a subset of money laundering activity  
11 specifically the laundering of foreign  
12 corruption proceeds?

13 A Yes.

14 Q All right. And then, third:

15 "... the report focuses on current and  
16 potential future strategies for  
17 confiscating illegal assets."

18 A Yes.

19 Q You go on in the next paragraph to make a few  
20 comments, including that the report is  
21 "deliberately uneven" and that in different  
22 places you both agree or sometimes disagree with  
23 the conventional wisdom. Could you simply  
24 explain what you mean by some of those comments.

25 A The coverage was selective in that first I think

1 local British Columbian and Canadian experts  
2 will fairly obviously have a better  
3 understanding of local circumstances there. So  
4 my expertise is very much international and  
5 comparative.

6 Secondly, given some of the other material  
7 placed before the commission, I thought it would  
8 be unproductive to concentrate on matters that  
9 had already been covered in more detail by  
10 people who had better knowledge on particular  
11 subjects. For example, particular kinds of  
12 predicate crimes in British Columbia that might  
13 give rise to money laundering.

14 Q At the bottom of that second paragraph you make  
15 a comment of the effect that you "write from the  
16 perspective of a foreigner, appreciating that a  
17 similarly qualified Canadian expert will know  
18 the local circumstances better."

19 I take it that you do take some care there  
20 to say that you don't purport to speak  
21 authoritatively about details in the Canadian or  
22 British Columbia situation?

23 A Yes, that's definitely correct.

24 Q I wonder if you could please describe the  
25 process that you follow, like what was involved

1                   as you wrote this report. What went into this,  
2                   please?

3           A        Sure. It was, I think, partly drew on almost  
4                   20 years of research and reflection about  
5                   anti-money laundering and associated policies as  
6                   they take place in many countries around the  
7                   world, some similar to Canada, some very  
8                   different. And as well as this kind of learning  
9                   process, both from earlier academic work and  
10                  policy work, I also drew specifically on the  
11                  sources listed in the bibliography. Many of  
12                  which do deal specifically with Canada or with  
13                  British Columbia.

14          Q        In terms of the nature of the work that you did  
15                   here with respect to getting insights about  
16                   British Columbia and Canada, is it the case that  
17                   this is drawn more on the body of written work  
18                   and sources available as opposed to -- and no  
19                   doubt the pandemic prevented you even had you  
20                   wanted to, you didn't travel here to Canada or  
21                   engage in a lengthy set of interviews,  
22                   et cetera?

23          A        Yes, that's definitely true. There was no  
24                   research on site. Almost nothing in the way of  
25                   interviews. So yeah, it was written sources as



1                   you say.

2                   Q     All right.  At the bottom of that page, the  
3                   header is "The Current Money Laundering Threats  
4                   in British Columbia and Canada."  And you say at  
5                   the bottom of that page 1:

6                             "This section briefly and selectively  
7                             covers some of the most important  
8                             mechanisms of laundering in British  
9                             Columbia and Canada more ..."

10                   Then down onto the page 2 the next heading is  
11                   "Cash."  I wonder if you could comment on the  
12                   ongoing importance of cash as a medium or  
13                   instrument of money laundering, please.

14                   A     I think that often people assume that because  
15                   cash is something of the oldest and the crudest  
16                   way of money laundering that because we have  
17                   almost 30 years of anti-money laundering policy,  
18                   that the use of cash laundering is no longer  
19                   relevant or common.  And I think that's wrong.  
20                   That cash is probably still one of the most  
21                   important mechanisms for laundering the proceeds  
22                   of crime.  I think it's more common where you  
23                   have relatively low value crimes, but even very  
24                   recently even in jurisdictions that have had  
25                   anti-money laundering laws for 30 years, there



1                   returning undeclared cash to those  
2                   detected carrying it in through the  
3                   border, with very small penalties."

4                   You go on to say:

5                   "To an outsider, this policy seems like an  
6                   incredible favour to international money  
7                   launderers."

8                   I wonder if you could just describe what that  
9                   comment describes and then how it is that Canada  
10                  stands out or compares to other jurisdictions.

11                 A       Where in comparable jurisdictions if people take  
12                   in large amounts of undeclared cash and it's  
13                   found, they can usually be pretty assured  
14                   they're going to lose that cash. And indeed  
15                   there's probably a fair chance that as well as  
16                   losing the cash, they'll be charged with a money  
17                   laundering offence or at the very least they  
18                   have to come up with a good reason why they  
19                   shouldn't be charged with a money laundering  
20                   offence.

21                   And, say, in jurisdictions like Australia in  
22                   fact that's the single greatest route of money  
23                   laundering prosecutions is people bringing in  
24                   undeclared cash across the borders. So relative  
25                   to that sort of policy, Canada's approach seems

1                   very much a case of taking kid gloves or using  
2                   kid gloves.

3           Q       And to the extent that what might result in a  
4                   number of cases is a small penalty but not  
5                   necessarily confiscation and very unlikely to be  
6                   prosecution or investigation or something more  
7                   involved, I take it that gives rise to the  
8                   dynamic that the risk of a smaller penalty could  
9                   be just simply the cost of doing business for a  
10                  money launderer?

11          A       Very much so. Especially when it seems that  
12                  obviously a majority of undeclared or almost  
13                  certainly a majority of undeclared cash is not  
14                  found at the border. So even if it's a small  
15                  fraction that's detected and then only a small  
16                  fraction of that small fraction actually suffers  
17                  a meaningful penalty, then those sanctions are  
18                  not dissuasive. They don't create a deterrent.  
19                  And as you say, criminals, money launderers may  
20                  just see that as a fairly low and acceptable  
21                  cost of business.

22          Q       I wanted to pick up on that comment about the  
23                  deterrent or dissuasive effect of different  
24                  approaches. Is it your view that money  
25                  launderers -- I'm thinking here of more

1                   sophisticated sorts of players that are putting  
2                   some real effort into figuring what the  
3                   mechanism is for money laundering. Are they in  
4                   your mind likely to be more responsive to the  
5                   deterrent effects, in other words that they  
6                   might look at one jurisdiction and say, let's no  
7                   longer target that province, that country, that  
8                   jurisdiction because things are tightening up;  
9                   we should look to a different place?

10            A        I think that dynamic is it more likely to be the  
11                   case as you say with third party or so-called  
12                   professional money launderers that are dealing  
13                   with relatively large sums and less likely to  
14                   apply to those engaged in so-called self-  
15                   laundering where the proceeds of crime are  
16                   relatively small and can be fed pretty directly  
17                   into things like retail purchases.

18            Q        When you describe self-laundering, is that more  
19                   like to be to be domestic in the sense that it  
20                   may stay within the borders of that host or home  
21                   country?

22            A        Yes, that's correct.

23            Q        Okay. The next heading refers to "A 'Vancouver  
24                   Model?' Casinos and Underground Banking." You  
25                   make reference to reports by Dr. German and

1 Schneider and their description about a  
2 Vancouver model. In the next paragraph you say  
3 a central feature of that description is the use  
4 of casinos.

5 I wonder if I could just pause on that and  
6 get an understanding of what the basis is, if it  
7 really comes out of the German and Schneider  
8 reports, the basis for your description and  
9 understanding of this so-called Vancouver Model.

10 A Yes.

11 Q Okay. At the top of the next page you make an  
12 interesting point from the perspective of  
13 looking at some other jurisdictions and you  
14 write:

15 "Though there are certainly well  
16 documented examples of large-scale money  
17 laundering through casinos elsewhere (e.g.  
18 Macau), laundering through casinos is  
19 generally only a secondary mechanism for  
20 international money laundering."

21 Maybe I can just stop there and ask what you  
22 mean by that statement.

23 A Although the state of knowledge we have on money  
24 laundering is pretty incomplete and patchy, so  
25 there are no really absolute statements that can

1                   be made, but on the evidence that we do have,  
2                   laundering through casinos seems a less  
3                   important route or means of laundering money  
4                   than other options such as through the real  
5                   estate sector or through the use of corporate  
6                   vehicles, most often shell companies.

7           Q       And indeed you go on in the next sentence to  
8                   make that very point:

9                                "In the context of BC, problems with shell  
10                               companies and real estate are probably  
11                               more serious ... threats."

12                   And you go on to comment on some remedial AML  
13                   actions that are occurring in the casinos and  
14                   gaming sector, I take it.

15           A       Yes.

16           Q       Okay. The next paragraph you refer to  
17                   underground banking, and in particular that it  
18                   may be associated with particular ethnic  
19                   communities. I wonder if you could give us  
20                   maybe a short primer with respect to what these  
21                   informal value transfer systems are and then  
22                   secondly how is it that they may affiliate or  
23                   associate to particular cultural or ethnic  
24                   communities.

25           A       So these are commonly used for diasporas for

1                   transferring money back and forth between the  
2                   home country and the country of residence.  
3                   They're often the actual underground banks  
4                   themselves. People on either side might be  
5                   related, those that do the transferring, and  
6                   they usually take place in cash, not because  
7                   cash is physically moved from jurisdiction A to  
8                   jurisdiction B, but because someone might drop  
9                   off cash in jurisdiction A. And then  
10                  correspondingly, say, someone will get in touch  
11                  with the transferrer, will get in touch with  
12                  their cousin, say, in jurisdiction B, and give  
13                  out an equivalent sum, again of cash, to a  
14                  recipient in that jurisdiction.

15                                 And either the transactions match over time  
16                                 or else perhaps, if there's an imbalance in one  
17                                 direction, eventually there may be some transfer  
18                                 of money between the person -- the transferor in  
19                                 jurisdiction A to jurisdiction B.

20                  Q         I take it from the comment about the diaspora  
21                                 that -- and I'm hearing a bit of an echo, so if  
22                                 that is creating a problem at any point, just  
23                                 let me know and we can pause to address it.

24                                 I take it from that comment about the  
25                                 diaspora that one of the dynamics may be that to



1                   the extent that there are certain countries that  
2                   may have people, populations or members of the  
3                   same ethnic community scattered around the globe  
4                   in other countries, this is simply an informal  
5                   banking or transfer system that allows someone  
6                   to, for example, send money back home?

7           A       Yes, that's right. It's often used for  
8                   transfers within families.

9           Q       And I assume a good part of that activity is  
10                   legitimate in the sense that it's not using  
11                   necessarily the big established banks, but it's  
12                   not criminal in nature.

13          A       That's correct in that as far as we know the  
14                   overwhelming majority of those transfers are  
15                   used for entirely legitimate and lawful  
16                   purposes. And indeed in many cases they have an  
17                   important positive development outcome to, i.e.,  
18                   the people working, an immigrant working in a  
19                   richer company and send money often more cheaply  
20                   than is available through official channels  
21                   like, say, Western Union back to family in the  
22                   poorer country for whatever needs they have  
23                   there.

24                   I should say as well just regarding the  
25                   echo, I do have a headset here, so I could

1                   switch to that if an echo is becoming a problem  
2           Q        I think we can carry on.  It's not too bad.  It  
3                   just happened once or twice.  So if it gets  
4                   worse, I will no doubt get a note from our IT  
5                   guru and we'll deal with it at that point.

6                   At the same time is it the case that these  
7                   informal value transfer arrangements can present  
8                   a vulnerability or risk of misuse or use for the  
9                   purpose of money laundering?

10          A        Yes, they can simply because of the fact that  
11                   they're off the books and that there's no  
12                   official record of them, but they're not part of  
13                   the anti-money laundering surveillance system  
14                   that covers formal banking.  There is a risk  
15                   there.

16          Q        You have an interesting comment in the bottom of  
17                   that paragraph, the second paragraph that we see  
18                   on the screen on page 3 of the report, to the  
19                   effect that a person using the informal value  
20                   transfer type of arrangement could actually end  
21                   up in the same position as the criminal with the  
22                   bags of drug money, let's say.  Could you  
23                   explain how that's the case.

24          A        Usually these transfers do happen in cash, and  
25                   for the purposes of someone looking to spend

1                   that legitimately, that may not pose any  
2                   problem, but obviously in -- for a criminal,  
3                   particularly if it's a large amount of money,  
4                   the whole -- one of the main goals of money  
5                   laundering is to take cash and move it somehow  
6                   into the banking system or at least into the  
7                   formal system. So by itself informal banking  
8                   may not be particularly useful or at least it  
9                   may only be a first step or a component of the  
10                  money laundering scheme.

11                 Q     In the next section you go on, professor, to  
12                   discuss three different topics, although there's  
13                   some relationship obviously between them: real  
14                   estate, lawyers and trust accounts. I wonder if  
15                   we could go through those one by one, and ask  
16                   you first with respect to real estate, the  
17                   second paragraph under the heading you say it's  
18                   a "commonly exploited sector for large-scale  
19                   money laundering." What is the risk with  
20                   respect to real estate?

21                 A     I think firstly that real estate -- obviously  
22                   the sums of money involved are large, and so for  
23                   criminals who are really -- who have got  
24                   millions of dollars or perhaps even more than  
25                   that, that they have a prima facie plausible

1                   excuse about what their -- a \$5 million transfer  
2                   to buy a \$5 million house is not particularly  
3                   suspicious, at least superficially.

4                   I think that real estate can also be not  
5                   just a store of value for criminals in the same  
6                   way that real estate is a store of value for  
7                   legitimate homeowners as well, but in some ways,  
8                   previewing the point later on about the  
9                   usefulness for real estate for foreign  
10                  corruption proceeds, the house can be or the  
11                  residence can be useful as a kind of a physical  
12                  vault or escape post for foreign officials who  
13                  may be fleeing their home country either because  
14                  they've been caught out or fear they're about to  
15                  be caught out for corruption, or because they're  
16                  being exposed to political persecution or both.

17                  Q     Do you have a perspective of the risk of real  
18                         estate being used as a mechanism for money  
19                         laundering specifically for British Columbia and  
20                         Canada?

21                  A     I think given the profile of British Columbia  
22                         and Vancouver that you have very high values  
23                         that are growing, a large investment from  
24                         overseas and a pretty lightly regulated sector,  
25                         both for real estate agents themselves and for

1                    ancillary services like lawyers that I think in  
2                    combination it's a major point of vulnerability.

3                    Q    Is it an answer or a partial answer that banks  
4                    can be looked to as a way that suspicious  
5                    activity is reported and addressed through, for  
6                    example, the FIU, the financial reporting types  
7                    of regimes that arise from the FATF model as the  
8                    mechanism to avoid or minimize those sorts of  
9                    risks?

10                  A    In other jurisdictions banks have been  
11                  insufficient to tackle the risk of money  
12                  laundering in the real estate sector,  
13                  particularly money that crosses borders because  
14                  of the tendency whereby that money is held by  
15                  professionals, real estate agents or lawyers,  
16                  often in lawyers' trust accounts. And what  
17                  banks see is they see the account of the real  
18                  estate agent or maybe an escrow agent or a  
19                  lawyer, but they don't see the underlying  
20                  customer there.

21                                  Secondly to that as well is the problem  
22                                  of real estate purchases through shell companies  
23                                  or other corporate vehicles. And, again, in  
24                                  that case, again particularly when the  
25                                  transaction involves international transaction,

1           the failure to identify a beneficial owner can  
2           make it a very useful mechanism for money  
3           laundering for either domestic criminals and  
4           some ways even more so by criminals from abroad.

5           Q    What is the role that you describe that the  
6           lawyer's trust account may have a role.  Could  
7           you describe what that is.

8           A    So often -- and this is something that's common  
9           to other jurisdictions as well -- lawyers may  
10          hold their -- that there may be a law firm using  
11          a trust account to hold clients' funds.  And  
12          when the bank performs its know your customer  
13          duty, it only sees the law firm, not the  
14          underlying customer.

15                   And this can be even more risky when there's  
16          commingling of clients' funds or when the  
17          lawyer's trust account is used for things that  
18          really don't have any legal purchase -- any  
19          legal purpose but rather a pretty straight out  
20          commercial transaction.  And if real estate  
21          agents -- depending on the jurisdiction, if real  
22          estate agents have trust accounts then, again,  
23          the same problem can occur.  The banks know  
24          their customer, the real estate agent, but not  
25          their customer's customer.  And again if there's

1                    commingling of funds, different people's funds  
2                    are mixed together, then, again, that makes  
3                    visibility and traceability much more difficult.

4                    Q    And I take it from that description, then, the  
5                    fact that money may be held by a lawyer or law  
6                    firm and that that might -- is a dynamic where  
7                    that can prove to be basically a dead end,  
8                    there's no realistic chance -- if there's an  
9                    investigation or inquiry that tries to learn  
10                    who's actually the holder of the money that's  
11                    going into the property or transaction, the fact  
12                    that there's a lawyer involved in some  
13                    circumstances may mean there's no way to find  
14                    out.

15                    A    That's true. I think it's a problem two ways  
16                    that, first off, suspicious transactions are  
17                    less likely to be flagged up prospectively or at  
18                    the outset because as I say, the lawyer or the  
19                    other professional is seen, not the underlying  
20                    client. And then in the unlikely event that law  
21                    enforcement or someone else does twig that  
22                    there's something suspicious about the purchase,  
23                    then as you say, it can make it very much harder  
24                    to work out who's really behind the transaction  
25                    and to apprehend them.

1 MR. MARTLAND: Thank you. Madam Registrar, if we  
2 could go to the next page, page 4 of the report,  
3 please.

4 Q And you've alluded and touched on this already,  
5 Dr. Sharman, but the heading at the top there  
6 "Shell Companies." What sorts of risks arise  
7 from the use of shell companies and what kinds  
8 of measures are viable to try to mitigate those  
9 risks?

10 A Shell companies create vulnerability because you  
11 have -- an expendable legal person can set up in  
12 dozens of jurisdictions online very quickly for  
13 perhaps a few hundred dollars and as a legal  
14 person, of course, it can be the owner of the  
15 property, it can hold a bank account and it can  
16 act as the screen or a veil to separate and  
17 conceal the underlying real owner, the  
18 beneficial owner.

19 Again, this means that suspicious  
20 transactions are less likely to be flagged as  
21 such and secondly it means that investigations  
22 can stop dead. If you find out that company A,  
23 B, C is involved and then you can't find who  
24 actually owns company A, B, C, then that's that  
25 in terms of the investigation most often.



1           Q     You make reference in that paragraph to the  
2                    British Columbia *Land Owner Transparency Act* as  
3                    an example of one of the kinds of responses that  
4                    we see from government. You go on to -- I  
5                    suppose it's a variation on Cervantes. You  
6                    write that the "proof of the pudding is in the  
7                    implementation." Could you explain what you  
8                    mean with that, please.

9           A     I think basically for law enforcement purposes  
10                   but perhaps not just for law enforcement  
11                   purposes is that you should know the identity of  
12                   the real person or the real people who own  
13                   property in a jurisdiction, i.e., that you  
14                   should be able to look through a shell company  
15                   or trust to find out who the relevant people  
16                   are. I think it's positive when legislative  
17                   action is taken to create a registry to create  
18                   that level of transparency about who owns what.

19                         But the story of money laundering -- well,  
20                   the story of anti-money laundering over the last  
21                   30 years has been increasingly numerous,  
22                   far-reaching and powerful laws that seem to have  
23                   a very uncertain effect on actually the  
24                   prevalence of money laundering or the predicate  
25                   crimes that give rise to that money laundering.

1                   So hence the sort of recurrent scepticism about  
2                   the report that legislation is good but  
3                   enforcement is really the name of the game.

4           Q       And so no matter how polished or well-conceived  
5                   the legislation may be, if it lacks an effective  
6                   enforcement or implementation, it really doesn't  
7                   deliver?

8           A       Yes.  It's -- and as I say, there's just a long  
9                   track record of rules that remain dead letter.  
10                   That was in part the inspiration for the mystery  
11                   shopping expedition to buy shell companies.  
12                   Just because you impose a speed limit doesn't  
13                   mean that people necessarily drive any slower;  
14                   just because you ban a certain class of drugs  
15                   does not mean that class of drugs is actually  
16                   unavailable.

17          Q       The next heading you refer to "Assessing Current  
18                   Money Laundering Vulnerabilities and the  
19                   Effectiveness of Policy Responses."  You go on  
20                   to offer some perspective on how British  
21                   Columbia and Canada are doing.  What's your take  
22                   on how this province and this country are doing?

23          A       Not well would be the short answer that I think  
24                   a variety of sources, including the Financial  
25                   Action Task Force in the evaluation review of

1                   2016, but also the reports by Peter German, by  
2                   Schneider, by civil society and in the press.  
3                   Also in talking with firms who do private  
4                   investigations or asset recovery. Just many,  
5                   many different sources do tend to converge on  
6                   the idea that even relative to the fairly low  
7                   standards of anti-money laundering  
8                   effectiveness, that Canada is not doing well.

9           Q        You have a [indiscernible] 2020 interview from  
10           the head of the FATF, the Financial Action Task  
11           Force, making a fairly general comment, and I'll  
12           read it:

13                         "Everyone is doing badly, but some are  
14                         doing less badly than others."

15           I take it within that you would say Canada is in  
16           the doing badly as opposed to less badly.

17           A        Yes, that's correct.

18           Q        And in part you draw on the FATF review of  
19           Canada, which I think is from 2016.

20           A        Yes.

21           Q        All right. You, in the last sentence in that  
22           paragraph, refer to the fact that there are  
23           sometimes pronouncements from, for example, the  
24           Canadian government that Canada has a robust and  
25           comprehensive AML and ATF, antiterrorist

1 financing, regime. You say those claims aren't  
2 credible.

3 A Yes, I think on the available evidence that's a  
4 very optimistic read of the situation.

5 Q Why do you say that's the case?

6 A I think that both the professional opinion of  
7 people in law enforcement and private industry,  
8 but also just the number of convictions that are  
9 seen, the amounts of money uncovered, there just  
10 seems to be very little enforcement going on and  
11 it seems unlikely [sic] that there's not much  
12 enforcement because there's not much money  
13 laundering. It does seem like Canada has its  
14 fair share of crime in British Columbia. And  
15 the low level of money laundering enforcement  
16 just seems to reflect a low level of  
17 enforcement.

18 Q And so I suppose to go back to your example  
19 about a new speed limit in car speeding. If  
20 there's no police cruisers on the Autobahn to  
21 enforce a speed limit, you're not going to get  
22 reports of speeding cars even though they exist.  
23 Is that the concept?

24 A That's true. If you don't have a lot of -- if  
25 you very rarely have speeding tickets that

1           either means your population is incredibly law  
2           abiding or that your system of traffic policing  
3           is not very effective. And I think -- for the  
4           analogy for money laundering I think it's the  
5           second.

6           Q     With respect to the number of convictions for  
7           money laundering activity or offences, do you  
8           view that as being a fair metric or measuring  
9           tool to get a read on how a country is doing in  
10          tackling money laundering?

11          A     It's a crude one and it's a derivative one.  
12          Ideally what's a more appropriate measure is to  
13          say how much money laundering is going on at  
14          time A and then introduce a policy and see how  
15          much money laundering is going on at time B or  
16          looking at the incidence of predicate crimes.  
17          Does drug dealing go down as money laundering  
18          becomes harder?

19                    Unfortunately over the last 30 years it's  
20          really proven to be impossible to find, to  
21          measure money laundering directly, and so  
22          there's this default to a few indicators like  
23          the number of prosecutions, convictions,  
24          arrests, suspicious activity reports, money  
25          confiscated and so on. So they're noisier

1 signals, but I think even if you have a variety  
2 of noisy signals and they're all giving you  
3 pretty much the same conclusion, I think we can  
4 be reasonably confident that it's -- that there  
5 is a genuine problem that anti-money laundering  
6 doesn't work terribly well.

7 Q On the top of the next page -- and, Madam  
8 Registrar, if we could bring that up, please --  
9 you give us a figure or comparison that is  
10 rather startling. You say:

11 "In a 16-year period Canada has had only  
12 316 money laundering convictions."

13 And in comparison to that, granted with a bigger  
14 population but dealing with simply one year, the  
15 year of 2017, Britain had 1,435.

16 A Yes. To see, as you say, there's a population  
17 difference, but even so it's -- Britain probably  
18 convicts far fewer people than the United  
19 States, even per capita. But that seems a very  
20 low figure for the number of money laundering  
21 convictions in Canada.

22 Q You, in the next paragraph, pick up on a point  
23 you were just making about how much money  
24 laundering is occurring and how does one attempt  
25 to measure or get a read on the quantity or

1                    magnitude of that activity. Do you see that --  
2                    first of all, just to confirm, I take it you say  
3                    there isn't a clear method or reliable way to  
4                    get that read, that measurement?

5                    A        That's correct. There's no real -- there's no  
6                    really reliable, accurate method, even roughly,  
7                    for getting a handle on how much money is  
8                    laundered.

9                    Q        Do you think it is worth the effort to try to  
10                    come to grips or get indicators or a read on the  
11                    extent of the money laundering activity that's  
12                    occurring?

13                    A        I think it's worthwhile in proving the secondary  
14                    measures that we have, these kind of proxy  
15                    measures, but I'm very sceptical that we could  
16                    get a reliable and valid measure of money  
17                    laundering at the level of British Columbia or  
18                    Canada and still more sceptical that we could  
19                    ever have a reliable or valid total for global  
20                    money laundering.

21                    Q        And why is it that this is so hard to measure or  
22                    quantify?

23                    A        I think in part because of the obviously secret  
24                    and criminal nature of the exercise, but in part  
25                    that money laundering law itself is changing and

1           that newer fences are created or new predicate  
2           crimes are drawn into the money laundering  
3           orbit. For example, tax evasion for a long  
4           while was not a predicate crime for money  
5           laundering and then it did become a predicate  
6           crime for money laundering.

7                         So just that legal change of the status of  
8           tax evasion gives you the impression that the  
9           amount of money laundered increased  
10          substantially whereas of course it's a  
11          definitional or a legal change, not a change in  
12          criminal behaviour.

13          Q         In the next paragraph you make the point that  
14          Canada seems to have a particularly weak record  
15          in prosecuting and convicting money laundering  
16          and related financial crimes. What are some of  
17          the reasons in your view that Canada and the  
18          province of BC do fall as short as you say that  
19          they do?

20          A         I think in part it's legal powers, but that's  
21          not the most important. I think it's often a  
22          question of bureaucratic incentives. It's the  
23          fact that everyone finds prosecuting financial  
24          crime difficult, particularly if that has an  
25          international aspect. I think that the relative



1                    pay differences between working in the public  
2                    sector and financial investigation and the  
3                    private sector means that there tends to be  
4                    something of a drain of expertise from law  
5                    enforcement to the private sector.

6                                       And then I think there's also --  
7                    investigating financial crime is something that  
8                    takes practice. If you don't have practice at  
9                    it, you tend to be not very good at it. And I  
10                    think there's kind of a self-reinforcing  
11                    tendency whereby if there's not much of it going  
12                    on, not much investigation and prosecution of  
13                    complex financial crime, those skills are not  
14                    built up and amassed.

15                                       So I think there's a combination of reasons  
16                    that make it difficult in pretty much all  
17                    countries, but I think in some ways those  
18                    factors apply particularly in Canada.

19                    Q                    Do you perceive there to be some misalignment in  
20                    Canada or other countries between the model of  
21                    taking the least officer investigators who are  
22                    familiar no doubt with numerous sorts of  
23                    conventional crimes, robberies, assaults, what  
24                    have you, drug trafficking kinds of activity,  
25                    but then asking those officers or expecting of

1           those officers a level of, for example,  
2           accounting and financial knowledge that would be  
3           needed to deal with a more complex money  
4           laundering investigation?

5           A     Yes, that's true. That financial investigation  
6           tends to be a specialist pursuit, and if you  
7           have police who are generalists, although there  
8           may be many good things about having law  
9           enforcement officers with a wide range of  
10          skills, there is a tradeoff between breadth and  
11          depth.

12                     And in countering money laundering or  
13           associated financial crime, it really is  
14           important to build up, to keep and kind of to  
15           nourish specialized expertise. And unless the  
16           appropriate incentives are put in place and the  
17           right institutional structures, that doesn't  
18           happen. And I think Canada is one of the  
19           jurisdictions that struggles with that.

20          Q     And you describe that there can be, I suppose,  
21           some pull to the private sector where salaries  
22           may be higher and that's a dynamic where I take  
23           it that can impede the ability to build up the  
24           expertise on the enforcement or regulatory side.

25          A     That's correct. So in, say, the National Crime

1 Agency in the UK, which has the primary but not  
2 sole responsible for investigating money  
3 laundering, the average salary of someone  
4 entering is between 35- and 40,000 pounds a  
5 year. They can walk out the door to a private  
6 sector institution, perhaps like a bank, and in  
7 the very next week double their salary.

8 This of course means that even if you build  
9 up the expertise and you do have a cadre of  
10 officers with the expertise and with the  
11 experience, that keeping them may be difficult,  
12 particularly at a time when there's a demand for  
13 those same people in the private sector where  
14 they get paid a lot more.

15 Q Does that call out for a different approach to  
16 how those people are retained and remunerated if  
17 they're going to be doing that work if the  
18 expertise is to be built up?

19 A It does. So, again, the NCA untold here  
20 actually has a vacancy of 20 investigators that  
21 it would like to hire but because it tends to  
22 get outbid or priced out by the private sector,  
23 that a lot of the relevant people -- and this --  
24 yeah, I think exactly it requires some  
25 rethinking of the working conditions and the pay

1                   of people who do have the expertise necessary to  
2                   be effective in investigating particularly  
3                   complex financial crime. I think it may also  
4                   relate to solutions beyond the state, which I  
5                   talk about later on in the report.

6                   Q     And we'll get there in due course and I  
7                   appreciate that comment. In the next paragraph  
8                   you write:

9                                 "Despite the common metaphor that money  
10                                launderers are in an 'arms race' with the  
11                                authorities, who face a 'whack a mole  
12                                problem,' or that criminals are forced to  
13                                innovate, in fact the effectiveness of AML  
14                                in Canada and elsewhere is so low that  
15                                this seems unlikely to be correct."

16                   I wonder if you could expand on that.

17                   A     For complex and international, say, again,  
18                   getting towards laundering the proceeds of  
19                   foreign corruption crimes, it's striking that in  
20                   reading the reports from the 1990s and then  
21                   reading reports from last year or the year  
22                   before that the basic strategies have not really  
23                   changed.

24                                So lawyers' trust accounts, shell company,  
25                   real estate, that combination worked well in the

1 late 1990s. It still works pretty well today  
2 each in relatively well-regulated jurisdictions  
3 like Britain and the United States. I already  
4 mentioned how cash can still be surprisingly  
5 useful in many money laundering schemes and it  
6 again gets to this point that money launderers  
7 often don't have to be too original. They don't  
8 have to be too innovative because the system  
9 tends to have such a low level of effectiveness.

10 Q The so to the extent that some posit a sort of  
11 exciting movie premise that these sophisticated  
12 criminals are switching quickly into Bitcoin and  
13 then transferring over to the newest thing and  
14 always just one step ahead of law enforcement,  
15 for example, you take issue with that and say,  
16 look at the old fashioned simple method -- your  
17 example, I think, is use of a lawyer to then --  
18 combined with a shell company in a real estate  
19 holding, those kinds of mechanisms still work  
20 perfectly fine without much chance of actually  
21 being detected or caught.

22 A There have been some changes and there are some  
23 criminals who are quite innovative, but I think  
24 they're the minority and they're the exception.  
25 And it would be a mistake to think that the

1                   system is so effective that most money  
2                   launderers are forced to be innovative and are  
3                   forced to abandon money laundering techniques  
4                   fairly quickly because they become somehow  
5                   obsolete or outmoded or leave the criminal  
6                   vulnerable to prosecution or asset recovery. In  
7                   most cases I don't think that's true.

8                   Q     In the next paragraph you make reference to the  
9                   Silver International E-Pirate police  
10                  investigation or case and say that that seems to  
11                  epitomize the general failure of the Canadian  
12                  criminal justice system to respond to such  
13                  threats.

14                         I should probably pause first to just ask  
15                         what is your basis or source of knowledge about  
16                         that E-Pirate case, please?

17                  A     From the report by -- or the reports Peter  
18                  German and by Schneider, by the associated media  
19                  coverage and some other scattered references to  
20                  them and the other sources cited in the  
21                  bibliography.

22                  Q     And what is the -- what's your view about that  
23                  being a very significant and high profile case  
24                  that did not ultimately proceed, the impact of  
25                  that sort of an outcome?



1                   important to be able to find out who the real  
2                   beneficial owner is and that untraceable or  
3                   anonymous shell companies and other corporate  
4                   vehicles are one of the most important  
5                   mechanisms for large scale laundering and  
6                   associated financial crimes.

7           Q        You make reference in that paragraph to the  
8                   British Columbia expert panel on money  
9                   laundering and real estate, and then also to  
10                  similar comments by a host of different  
11                  international bodies and NGOs and academics,  
12                  et cetera, to the same point.

13                         I take it there might be a different answer  
14                         with respect to the question of whether these  
15                         are public registries or not, but at a general  
16                         level the concept of having effective beneficial  
17                         ownership registration and tracking you see as  
18                         an important tool. Is that a fair proposition?  
19                         And I welcome you to disagree, of course, if you  
20                         think that you don't.

21           A        No, I agree. I think it's -- beneficial  
22                         ownership -- an effective system is absolutely  
23                         crucial there. I think that's been a recurring  
24                         theme of reports about money laundering and  
25                         cross-border corruption for at least the last



1                   20 years.

2                   I think that there are a couple of ways of  
3                   getting there. Registries are one way, and I'm  
4                   a little sceptical that they're the most  
5                   effective way of getting there. I tend to have  
6                   more faith in regulated intermediaries, but I  
7                   think certainly one or other of those  
8                   alternatives is necessary. And in the absence  
9                   of either, then really that's an acute point of  
10                  money laundering vulnerability.

11                 Q    If I might ask you to please expand on that  
12                   point, you say that registries are one way, but  
13                   that you actually would probably give preference  
14                   or emphasis to dealing with the regulatory  
15                   intermediaries as you describe. What does that  
16                   describe? And just expand on that, please.

17                 A    For most people setting up shell companies it's  
18                   not particularly those who are doing so from  
19                   another jurisdiction. It's not a do-it-yourself  
20                   affair in that they're a class of intermediaries  
21                   that I refer generically as corporate service  
22                   providers. The FATF refers to trust and  
23                   corporate service providers, and these may be  
24                   lawyers but they may not be. And these are the  
25                   businesses whose business it is to set up shell

1 companies and then on sell them to end users.

2 And, for example, this might involve the  
3 corporate service provider, the intermediary  
4 doing most of the paperwork, lodging the  
5 government to see, making sure that accounts are  
6 kept current but also often providing services,  
7 perhaps as a nominee director, as a nominee  
8 shareholder as well as perhaps secretarial  
9 functions like phone or mail forwarding.

10 And those corporate service providers, I  
11 think potentially, are a key point of compliance  
12 in ensuring that the basic goal of corporate  
13 transparency and identifying the beneficial  
14 owner is met.

15 Q Out of interest, in the course of the kind of  
16 investigative side of your research and work  
17 professor, have you gone out shopping to see how  
18 these CSPs do business, and have you touched on  
19 activity in Canada, and what could you tell us  
20 about that, please?

21 A Sure. It's been a mix. So first off, together  
22 with two coauthors, Michael Findley and Daniel  
23 Nielson, we've made over 20,000 email  
24 solicitations to different corporate service  
25 providers over the last decade looking for shell

1                   companies, particularly whether or the not  
2                   corporate service providers ask for identity.

3                   I also go to conferences and seminars, or at  
4                   least in normal times outside the pandemic, of  
5                   the professional associations of corporate  
6                   service providers. I've had 15 years of  
7                   interviewing them as well. And then I've  
8                   actually bought some shell companies from  
9                   corporate service providers as well, looking  
10                  specifically to Canada in looking at the  
11                  advertising material of corporate service  
12                  providers. Often Canadian corporate service  
13                  providers are not shy about one of the selling  
14                  points of Canadian companies is that they're  
15                  very useful for hiding the true identity of a  
16                  beneficial owner, which of course is completely  
17                  against what the international standards are  
18                  trying to promote.

19                Q     Do you see the use of companies and  
20                  incorporation to achieve secrecy as being  
21                  something that is not actually tied to the  
22                  history or the initial reason for creating  
23                  limited liability through the existence of  
24                  companies?

25                A     Yes. Definitely. I think companies --

1 obviously the vast majority of companies,  
2 including shell companies, are set up for  
3 legitimate and legal purposes and that companies  
4 and the idea of legal personhood and limited  
5 liability are an unpinning of the modern  
6 economy. But I think the separation or the  
7 creation of a legal person, it can be interposed  
8 to hide a natural person, does mean that these  
9 devices can be abused. And as I say, that's one  
10 of the reasons they're one of the most common  
11 mechanisms for large-scale and complex money  
12 laundering.

13 Q In that last paragraph on page 6, which is on  
14 display, you make reference to the law firm that  
15 was at the centre of the Panama paper scandal,  
16 Mossack Fonseca. And I suppose beyond looking  
17 online for advertising, this is an example of a  
18 reputation that seems to be out there. You  
19 refer to the law firm describing Canada as a  
20 potential destination for tax evasion, I  
21 suppose.

22 A Yes, that's true. In material that was  
23 subsequently linked -- leaked, rather, as the  
24 Panama papers, Canada was one of the  
25 jurisdictions that Mossack Fonseca thought was

1                   particularly useful for those looking for  
2                   secrecy via shell companies.

3                   And indeed I visited Mossack Fonseca in  
4                   2008, and in speaking to some of their staff in  
5                   Panama City, again, Canada was one of the  
6                   jurisdictions that came up as being -- providing  
7                   companies with no requirement to reveal the  
8                   beneficial owner and hence very useful in  
9                   obscuring whatever financial activity that  
10                  individual -- those individuals were engaged in.

11                 Q    Is there a quality or a feature of the -- I  
12                   presume, the sort of white shoe reputation of  
13                   countries like Canada, probably Australia, New  
14                   Zealand, et cetera, that actually increases the  
15                   prospect that those countries are being used for  
16                   some of this activity?

17                 A    Yes, exactly.  It's the coincidence of a high  
18                   reputation and low regulation that if a criminal  
19                   uses a jurisdiction -- uses a shell company from  
20                   a jurisdiction that rightly or wrongly is  
21                   regarded as a high money laundering risk, then  
22                   the criminal is more likely to attract  
23                   attention.  But in using a company from Canada,  
24                   really the criminal can get almost all good  
25                   things go together.  It's easy to set up a

1                   company, it's cheap, they can hide their  
2                   identity and yet they can enjoy the good  
3                   reputation that adheres to Canadian companies.

4           MR. MARTLAND:  If we could please go over, Madam  
5                   Registrar, to the next page.

6           Q        The heading is "Measuring Beneficial Ownership  
7                   Performance."  I wonder if you could comment,  
8                   please, on how we do -- we would do best to  
9                   assess British Columbia and Canada's performance  
10                  with respect to beneficial ownership.

11          A        I think one approach is to read the laws and the  
12                   regulations, but I think that's not the best  
13                   approach.  I think best approach is a more  
14                   direct one of actually trying to set up whatever  
15                   corporate vehicle is of interest, companies,  
16                   trusts, partnerships.  Or at least eliciting for  
17                   such vehicles in British Columbia and Canada and  
18                   seeing in practice, in reality, what identity,  
19                   if any, has to be provided before that corporate  
20                   vehicle can be set up.

21                                And, again, it's in some sense an obvious  
22                   point and yet I think underappreciated that  
23                   there may be a big divergence between what the  
24                   rules say should happen and what actually does  
25                   happen in setting up those corporate vehicles.

1           Q     And so simply, I suppose, notionally simply  
2                   library review or reading the laws and statutes  
3                   and what have you, the description, is not going  
4                   to be providing you with the real picture on how  
5                   much -- what one can get away with.

6           A     That's true. So even trying to set up a company  
7                   in Florida, we impersonated terrorist  
8                   financiers. And the response from the law firm  
9                   in Florida was, you look like terrorists, so  
10                  I'll have to charge you more to do business with  
11                  you. It's clearly not the way the system is  
12                  meant to work.

13          Q     In the paragraph that we have on display under  
14                  that heading, "Measuring Beneficial Ownership  
15                  Performance," you refer to the FATF mutual  
16                  evaluation report in the 2016 review of Canada  
17                  confirming an unflattering picture and that the  
18                  report -- this is about four lines down --  
19                  includes the line:

20                         "Legal persons and arrangements are at  
21                         high risk of misuse, and that risk is not  
22                         mitigated."

23                  Could you comment on what you see as being the  
24                  high risk in particular for Canada and BC?

25          A     I think simply it's possible to form companies

1                   and trusts and then use them to, for example,  
2                   buy real estate while keeping the identity of  
3                   the beneficial owner secret in the sense that  
4                   the intermediary, the corporate service provider  
5                   that sets up that vehicle may have no obligation  
6                   or at least may not fulfill the obligation to  
7                   find out the person that they're dealing with.

8                   That means that if the company does come  
9                   under suspicion later on or gets into trouble,  
10                  then the trail stops cold. You've got company  
11                  ABC. You might go to a particular law firm and  
12                  say, you've set up company ABC; who owns it?  
13                  And the law firm simply says, we don't know.  
14                  And that's pretty much that in terms of the  
15                  investigation, particularly if the beneficial  
16                  owner is outside the jurisdiction in question.

17                  Q     In the next paragraph, Professor Sharman, you go  
18                        on to describe some of your investigative work  
19                        back in 2010 and then continuing with a larger  
20                        undertaking in 2011 to 2013. Could you please  
21                        give us a sense of the insights that gave you  
22                        about Canada in particular.

23                  A     The basic insight was that it's relatively easy  
24                        to set up a shell company in Canada without  
25                        revealing the identity of the person setting up



1           such a company and as I say, this is directly in  
2           violation of the basic rule or principle of know  
3           your customer that's meant to animate the  
4           approach to beneficial ownership. And that  
5           really hasn't changed too much in the period  
6           from 2010 to 2020. Indeed practices like bearer  
7           shares that have been abolished in stereotypical  
8           tax havens like the Caymans or the British  
9           Virgin Islands, I was surprised and dismayed to  
10          learn that up until very recently bearer shares  
11          were legal and available in Canada.

12          Q     I take it the point about bearer shares is those  
13                 are an example of where shares in the company  
14                 can be held by physically the person who has the  
15                 share certificate as opposed to registering to  
16                 any particular person and hence they're easily  
17                 transferrable and hard to know who actually has  
18                 that ownership stake in the company?

19          A     Exactly. Whoever holds the physical share  
20                 certificates owns the company. In that sense  
21                 they function like cash. And in the same way  
22                 it's easy to transfer cash without leaving any  
23                 trail, so the transfer of bearer shares is just  
24                 as easy to hide and just as difficult for law  
25                 enforcement to follow up.

1           Q     A little lower on that page, professor, and I  
2                    should pause to just let you know I will be  
3                    speeding up a little through some other sections  
4                    of the report, but I'm going a little bit --  
5                    deliberately a little slower through this first  
6                    section. It's very useful for us to have this  
7                    evidence. You have a heading that says  
8                    "Bureaucratic Obstacles to AML Effectiveness."  
9                    You go on to talk about Canada suffering from a  
10                   central paradox of AML policy. Could you help  
11                   us understand what you see as that paradox, how  
12                   you describe that.

13           A     I think if you read the rules on the books in  
14                    Canada or internationally, the anti-money  
15                    laundering system looks almost airtight, that  
16                    there's an incredibly impressive system of  
17                    surveillance, of incredibly powerful legal tools  
18                    for recovering assets. There's a network of  
19                    exchanging information from one country to the  
20                    next. And yet just commonsensically it's very  
21                    hard to point to a major diminution of either  
22                    money laundering or of the predicate crimes.

23                            And again, it's impossible to get a really  
24                            accurate or exact read on it. But cocaine is  
25                            still available. People are still engaged in

1                    plenty of crime. Criminals do seem to find a  
2                    way almost all of the time to launder the money  
3                    despite the presence of what ostensibly looks  
4                    like incredibly demanding and stringent  
5                    anti-money laundering laws and policies.

6            Q        In the paragraph on the bottom of that page you  
7                    have it as being "a disconnect between strong  
8                    laws and weak results"?

9            A        Yes.

10          Q        And then you say:

11                    "No doubt there are many reasons for  
12                    [it] ... one important factor that does  
13                    not get enough attention is the pattern of  
14                    incentives."

15                    And you alluded to incentives before. What  
16                    sorts of incentive dynamics are at play in  
17                    relation in particular for prosecutors, law  
18                    enforcement officers?

19          A        I think that often there can be an imbalance  
20                    whereby failures do more damage to a person's  
21                    career prospects than successes enhance that  
22                    person's career prospects. And that in law  
23                    enforcement organizations or amongst  
24                    prosecutors, if you have a system failure is  
25                    penalized very heavily, then it understandably

1 makes people risk averse and they may be biased  
2 towards taking fairly simple cases or simply not  
3 investigating very much at all. And so  
4 paradoxically the informal structure of career  
5 incentives may mean that law enforcement or  
6 investigative bodies don't actually do much in  
7 the way of investigation or enforcement.

8 Q How can that be remedied?

9 A I think partly it's a question of increasing  
10 skills and experience and that gets back to some  
11 of the material we discussed before. But I  
12 think also there should be some thinking through  
13 of policies that lead to excessive risk aversion  
14 and a realization that complex money laundering  
15 cases are inherently difficult and time  
16 consuming and tend to be expensive. And that  
17 unless you have a system that allows those sort  
18 of investigations to go forward and to fail,  
19 then there will just tend to be the situation  
20 where they're not investigated or they're not  
21 prosecuted. And unfortunately I think that  
22 tends to be the place where we are now.

23 Q [Indiscernible] I wonder if some part of that  
24 might be cultural within the -- whether it's a  
25 prosecuting authority or regulatory or a law

1 enforcement body, that if the office culture is  
2 such that one repeatedly marches into the fire  
3 without concern of whether it's going to  
4 necessarily go their way or not as opposed to  
5 being quite risk adverse, do you see that as one  
6 component of what needs to change to be more  
7 engaged?

8 A I think so. I think both at the level of  
9 individuals and organizations. So at the level  
10 of individuals in terms of career advancement  
11 and in organizations it may be in a budgetary  
12 sense too so that, again, in Britain and  
13 Australia and elsewhere that particularly losing  
14 some sorts of cases, particularly in the civil  
15 sphere, can be expensive. And of course for  
16 understandable reasons public institutions are  
17 put under strong pressure to stay within budget,  
18 which is reasonable, but it can have perverse  
19 effects, again excessive risk aversion.

20 MR. MARTLAND: Over to the next page, please, Madam  
21 Registrar.

22 Q In the third paragraph there, the paragraph that  
23 begins "even if avoiding investigations and  
24 prosecutions altogether is impossible," you talk  
25 about incentives to take simple cases. And then

1                   you write in the second sentence:

2                   "Money laundering cases, especially those  
3                   with an international aspect, are often  
4                   time-consuming, complicated, and have a  
5                   high probability of failure."

6                   Could you -- I think you've done some of this,  
7                   but why do you see these cases particularly  
8                   being so fraught with uncertainty?

9                   A    I think partly because of the lack of skills and  
10                   experience that have been talked about earlier.  
11                   But I think even where the skills and experience  
12                   are there that any time you have an  
13                   international aspect, to me it's in some ways  
14                   it's a surprise to figure out how laboursome and  
15                   inefficient things like mutual legal assistance  
16                   across borders, the difficulty of getting  
17                   evidence from one jurisdiction to another and  
18                   having it be admissible, the delays that this  
19                   imposed, the expense that it imposes.

20                   And I think, you know, particularly when you  
21                   move to foreign corruption cases, particularly  
22                   if you're facing criminals who can afford to  
23                   have a very high-powered legal defence team,  
24                   then, again, you have a lot of very skilful,  
25                   very well-paid lawyers on the other side who are

1                   doing their damndest to kick the case out. And  
2                   I think that's, as I say, why these cases tend  
3                   to take a long time in the case of foreign  
4                   corruption proceeds, asset recovery, decades  
5                   rather than years, and why they're in some ways  
6                   such an unappetizing prospect for investigators  
7                   and for prosecutors.

8                   Q     In the next paragraph you talk about sentencing,  
9                   I suppose sentencing ranges for money laundering  
10                  offences, and that they can create clear  
11                  disincentives for prosecuting even simple cases.  
12                  You go on to speak about reforms or changes  
13                  along the lines of, for example, increasing the  
14                  sentences for money laundering but also making  
15                  them consecutive to whatever sentence arises for  
16                  the underlying or predicate offence. If you  
17                  could, please describe what sorts of change you  
18                  think is needed there to be more effective.

19                 A     I think when money laundering policy was first  
20                  introduced, the hope was that the money  
21                  laundering offence would create a trail that  
22                  would lead to the predicate offence, i.e., that  
23                  you would find the suspicious financial  
24                  behaviour and then you would find the underlying  
25                  drug dealing. I think in practice it tends to

1                   be the other way around that law enforcement  
2                   discovers the drug dealing first and then the  
3                   money laundering secondarily and that where you  
4                   have a, say, for example, a five-year sentence  
5                   for the underlying predicate crime, say drug  
6                   trafficking, and only a three-year sentence for  
7                   the money laundering crime and where they're  
8                   served concurrently rather than consecutively,  
9                   prosecutors fairly understandably regard it as  
10                  pointless to bring a money laundering  
11                  prosecution and instead they concentrate their  
12                  efforts on the drug trafficking on.  
13                  Particularly if they have more experience in  
14                  drug trafficking cases than they do in money  
15                  laundering cases.

16                         So, again, there's something of a  
17                         self-reinforcing dynamic there that  
18                         understandably investigators and prosecutors are  
19                         more comfortable with the things that they have  
20                         a lot of practice at and therefore are good at  
21                         and are correspondingly reticent to deal with  
22                         things that they have less practice at and as a  
23                         result are less good at.

24                  Q     If we could please go to the next page, page 9.  
25                         And a few -- I see there the heading "Improving



1                   AML Performance." I suppose under this heading  
2                   you turn towards more discussion about solutions  
3                   and improvements.

4                   Let me maybe start, if I might, with this  
5                   question: do you take some hope or optimism  
6                   from some recent reform efforts made in British  
7                   Columbia and Canada? Do you see those as  
8                   reasons to be hopeful for better headway?

9           A        I'm cautiously optimistic there. I think  
10           particularly the legislative changes are moving  
11           in the right direction. However, again, to  
12           reprise this theme, I think really 90 percent is  
13           in the enforcement. And you can have very  
14           strong laws and nonetheless very weak practical  
15           results, and in fact relatively weak laws and  
16           still more impressive results. So there's a  
17           cautious optimism or at least a very tempered  
18           optimism there.

19           Q        And the next heading on that page you refer to  
20           public registries dealing with beneficial  
21           ownership. That's a proposal that we've  
22           certainly heard about on a number of occasions  
23           to have fully public beneficial ownership  
24           registries. Is this an area underlining the  
25           public part of that where you say that you may

1                   differ from the conventional wisdom?

2                   A     I think that public registries would be better  
3                    than the status quo, but I don't think that  
4                    they're actually the best option for improving  
5                    beneficial ownership standards. So if it's a  
6                    choice of public registries or what Canada and  
7                    British Columbia has now, I'd go for public  
8                    registries. But I think an even better approach  
9                    is licensed and regulated intermediaries,  
10                  corporate service providers, who have a duty to  
11                  verify the beneficial owners for shell companies  
12                  they create.

13                  I should say that those two solutions,  
14                  regulated intermediaries and public registries,  
15                  are not mutually exclusive. But I do find that  
16                  in certain courses the idea of public registries  
17                  I think has been overhyped and that the hopes  
18                  and expectations for them certainly outrun the  
19                  evidence that we have to support some of the  
20                  more optimistic and I think excitable claims  
21                  made about the effectiveness of beneficial  
22                  registries.

23                  Q     And if we could go over to the next page because  
24                  you make some of those points in your  
25                  description about it. I'll start with this

1                   third paragraph and then I'll actually go back  
2                   up to one above it. But you write in the third  
3                   paragraph there:

4                   "Yet despite the current popularity of  
5                   beneficial ownership registries there is a  
6                   striking lack of evidence that they do  
7                   actually help in deterring, detecting or  
8                   combating money laundering and related  
9                   financial crime."

10            A     Yes.

11            Q     And then you focus there particularly on the UK  
12               there that's been a strong component of  
13               certainly the public profile of the steps that  
14               are taken by the UK government.

15            A     That's correct. So the UK was a pioneer, and I  
16               think has an evangelical approach in that it  
17               thinks the whole world should have public  
18               registries of beneficial ownership. Again, I  
19               see some reasons to be optimistic about the  
20               registries, but, again, I think the claims of  
21               the British government and others are as yet not  
22               supported by evidence.

23            Q     And you identify in the next paragraph as one of  
24               the danger with registries is the risk they  
25               contain a large volume of low quantity

1 information. How does that arise?

2 A I think that there are obviously a lot of  
3 companies out there. The number of corporate  
4 vehicles runs into the millions in places like  
5 Britain and Canada. And I think it's a somewhat  
6 naive presumption that more information or more  
7 data are better. And I think you don't have to  
8 really reflect on it that long to think that in  
9 fact more data or more information, particularly  
10 where it's low quality, is not advantageous and  
11 in fact may stop you seeing things.

12 There's a problem of the needle in the  
13 haystack. Making the haystack better is not a  
14 good way of solving that problem. In fact it  
15 probably exacerbates it. Given that this  
16 information is unverified, is self-declared  
17 information, then there's problems about the  
18 quality of it, and I think some of those  
19 problems have come to light in the UK.

20 Q And appreciate it isn't as simple as turning up  
21 a dial, but if one could turn up the dial on the  
22 verification and maybe have regime where there's  
23 enforcement action against inaccurate reporting  
24 of information, does that increase the prospect  
25 with higher quality data, even if there's a lot

1 of it, that that might be quite useful?

2 A Yes. But that would be a lot of work if you  
3 have two or three million companies or corporate  
4 vehicles as you might in Canada. That's a lot  
5 of things to verify. Who does that? If it's a  
6 public agency, that can be expensive. And I  
7 think enforcement -- I'm a great fan of  
8 enforcement. I suppose it's the quote that laws  
9 without enforcement are just good advice. But  
10 enforcement, particularly when you have foreign  
11 beneficial owners, is quite tricky.

12 Q Going up to the top of that page, you write  
13 that:

14 "The main advantage of a public (open)  
15 registry, is that journalists, NGOs and  
16 other private parties can use these  
17 records to scrutinise suspicious  
18 arrangements."

19 And you go on to identify a number of examples  
20 of that, some notorious scandals, et cetera,  
21 that really exemplify how that sort of public  
22 sector, civic society bodies that are actually  
23 being effective with public information.

24 A Yes. I think that for a surprisingly large  
25 proportion and probably majority of complex

1 money laundering cases and things like the  
2 laundering of foreign corruption proceeds, it is  
3 things like the media or NGOs or whistle-blowers  
4 that break the story and do the initial  
5 investigative work. And I think those parties  
6 have rightly said that their investigative  
7 efforts would be bolstered if they had access to  
8 information about beneficial ownership through  
9 public registries.

10 Q At the bottom of that page, the heading refers  
11 to, with respect to beneficial ownership,  
12 regulating the CSPs. That's the theme you've  
13 been describing already. You go on to refer to  
14 a 2011 World Bank-UN Stolen Asset Recovery  
15 Initiative report to the effect that.

16 "... because registries are essentially  
17 passive archives that receive but do not  
18 check corporate information, a better  
19 solution is to mandate that CSPs collect  
20 beneficial ownership information."

21 If you could please describe what sort of --  
22 what kinds of steps are needed to make sure that  
23 CSPs are actually collecting that information,  
24 what is needed to make sure that that actually  
25 transpires.

1           A     I think first off CSPs have to be licensed and  
2                    regulated. I mean, right now in places like the  
3                    United States or Australia, one person in a  
4                    garage can open a website and start selling  
5                    shell companies and that person just doesn't  
6                    appear on the regulatory landscape at all. And  
7                    so it's impossible to therefore impose a duty on  
8                    that person to collect beneficial ownership  
9                    information.

10                    So I think, first off, CSPs have to be  
11                    licensed and regulated. They have to be visible  
12                    to the public authorities even though CSPs  
13                    themselves are private and for profit. And that  
14                    has to be a status that they can lose if they do  
15                    the wrong thing. And amongst the wrong things  
16                    is to sell companies or other corporate vehicles  
17                    to clients when they fail to verify the identity  
18                    of those clients, whether they're domestic or  
19                    whether they're international.

20                    And of course the aim is that if a  
21                    company -- if a shell company falls under  
22                    suspicion or becoming the object of  
23                    investigation, law enforcement can trace it back  
24                    to the CSP and then crucially trace it from the  
25                    CSP to get the identity of the beneficial owner.

1           Q     And so in that instance you're really talking  
2                     about moving a sphere of activity out of the  
3                     garage, to use that example, or the one-man  
4                     show, and really moving it into a regulatory  
5                     structure where there's meaningful understanding  
6                     about who's doing what and the requirement that  
7                     they follow certain rules.

8           A     Exactly. And certain rules should apply to them  
9                     and, again, that they should be audited for  
10                    compliance and that there should be enforcement  
11                    for those that do the wrong thing, that fail to  
12                    follow the rules.

13          Q     Are there examples of jurisdictions where there  
14                    have been effective measures taken to regulate  
15                    CSPs?

16          A     One of the surprising and the counterintuitive  
17                    findings that we mentioned was that  
18                    jurisdictions that are classically stigmatized  
19                    as tax havens are in fact very strict on forcing  
20                    people to prove their identity before they'll  
21                    sell a shell company. So, again, with coauthors  
22                    we've set up a shell company in the British  
23                    Virgin Islands, a couple in the Seychelles and  
24                    then browsing around elsewhere, and we find that  
25                    those jurisdictions who do have a licensed and



1 regulated corporate service providers almost all  
2 the time are the responses, we will sell you a  
3 shell company only when and if you provide a  
4 certified copy of the picture page of your  
5 passport and some utility bills to prove that  
6 you are who you say you are.

7 Q And reside at a given address as stated?

8 A Yes.

9 MR. MARTLAND: If we could go to the next heading on  
10 page 11, please, Madam Registrar.

11 Q The heading there refers to "Holding Directors  
12 Accountable." What sort of measures or steps  
13 are being contemplated in holding directors  
14 accountable?

15 A I think that one of the problems of shell  
16 companies is that the directors are often a  
17 straw man, they're often a nominee or a proxy,  
18 and that this is why the beneficial owner, not  
19 the director, is usually the important party.  
20 But I think that one indirect way of dealing  
21 with the problem of shell companies is to make  
22 the director actually responsible for the  
23 company. And that requires that there be a  
24 resident director simply because of the  
25 difficulty of extraditing people.

1                   So, for example, if it was a Canadian  
2                   corporation, if it was a Canadian company, you  
3                   would need it to have actually one real, live  
4                   breathing Canadian resident who was a director  
5                   of that company. And that if that company got  
6                   in trouble, the authorities could go to the  
7                   director and say, you are responsible in part  
8                   for this company and therefore since this  
9                   company has run into trouble, you've run into  
10                  trouble.

11                  Unfortunately what happens is where you have  
12                  a system of nominee directors, the directors of  
13                  the companies are able to say -- often they're  
14                  in a different jurisdiction -- I'm just a  
15                  nominee; I'm not the beneficial owner; I have no  
16                  real knowledge of what's going on with this  
17                  company, and if the company has been doing bad  
18                  things that's nothing to do with me. And  
19                  unfortunately that's what nominee directors have  
20                  said and so far they've generally been able to  
21                  escape accountability for companies that they  
22                  are nominally are in control of but actually  
23                  not.

24                  Q     In the course of some of your investigative  
25                  work, have you observed this dynamic of a

1                   willingness for people with no knowledge or  
2                   involvement of a company to nonetheless be  
3                   listed and identified as the nominee director,  
4                   for example?

5           A       Yes, definitely. So in the shell companies that  
6                   I've set up that's been a standard feature. And  
7                   you can see it on the websites of corporate  
8                   service providers where it's often a tick box  
9                   option where there's a price for a company and  
10                  then for maybe another hundred dollars you can  
11                  add a nominee director.

12                         So in setting up an English shell company,  
13                   there was a nominee director arrangement where  
14                   the nominee director sent a pre-signed but  
15                   undated letter of resignation, so you could  
16                   retroactively make them resign just by filling  
17                   in the date yourself and submitting it. So it's  
18                   a pretty standard commodity to get a nominee  
19                   director and it's very common and it's a  
20                   problem.

21           Q       In the next heading you turn to lawyers and the  
22                   role of lawyers in money laundering. What sorts  
23                   of risks and vulnerabilities -- it may be beyond  
24                   without having you repeat ground that you've  
25                   already tilled, but what sorts of

1                   vulnerabilities arise from lawyers and maybe  
2                   turning particularly to Canada?

3           A        I think particularly the idea of lawyers acting  
4                   as financial intermediaries. They have access  
5                   to the financial system but also the idea of  
6                   legal professional privilege which may create an  
7                   extra layer of secrecy that makes it more  
8                   difficult for law enforcement to find out what's  
9                   going on and can often kind of warn off or deter  
10                  law enforcement from even looking at things  
11                  because law enforcement says well, there's  
12                  lawyers involved; there's legal professional  
13                  privilege; if we put enough time and effort, we  
14                  might be able to overcome this, but we have a  
15                  lot of crime to investigate and maybe we'll just  
16                  leave this one alone and go on and do something  
17                  easier.

18                         So it's the function I've already described  
19                         in terms of access to trust accounts, their  
20                         gatekeeping or intermediary role in the  
21                         financial system and then the idea of legal  
22                         professional privilege.

23           Q        I'd like to read, if I might, from the bottom of  
24                   page 11 onto this top of page 12. You write:

25                         "Yet given how ineffective AML regulations

1                    seem to be even when they do cover  
2                    lawyers, for example, in Britain, this  
3                    conventional wisdom actually has very  
4                    little evidence to support it. Are  
5                    (regulated) British lawyers less likely to  
6                    be involved in money laundering than  
7                    (unregulated) Canadian lawyers? No one  
8                    knows, as there is not enough evidence to  
9                    say."

10            A    Yeah, I think this applies particularly to the  
11                    idea of lawyers having to lodge suspicious  
12                    activity reports or Suspicious Transaction  
13                    Reports. That the FATF standard is that lawyers  
14                    in other designated non-financial businesses and  
15                    professions should be captured within the  
16                    suspicious reporting activity. They are in  
17                    Britain. They are not the Canada. But because  
18                    the system is implemented and enforced so poorly  
19                    in Britain, I'm not actually sure that the  
20                    regulated lawyers -- really the authorities get  
21                    much for having corralled lawyers into the  
22                    suspicious activity reports system. They don't  
23                    get many reports and they tend to be very low  
24                    quality.

25            Q    You describe in paragraph --

1 MR. MARTLAND: Madam Registrar, if we scroll down a  
2 little to page 12 near the top.

3 Q You describe in that first full paragraph that  
4 these reports in the UK from lawyers can end up  
5 being a waste of time in the sense that they  
6 might capture a great deal of reporting -- for  
7 example, the examples you have there, asbestos  
8 in buildings, failure to preserve trees, that  
9 those are the kind of things flagged as  
10 suspicious activity?

11 A Yeah, they're the two most common, quote/unquote  
12 crimes that are reported by lawyers are to do  
13 with trees and building standards. Lawyers  
14 regard the system as a waste of time. The  
15 people who are receiving these reports also  
16 regard them as generally a waste of their time.

17 Q Do you have a view with respect to the -- with  
18 respect to lawyer trust accounts and whether  
19 they should be limited in how they can be used?

20 A Yes, definitely. I mean, I think my scepticism  
21 about including the lawyers within the  
22 suspicious activity reports regime does not mean  
23 that I favour completely unregulated legal  
24 sector or lawyers. I do think that lawyers  
25 should have a know your customer obligation and

1           that legal professional privilege should apply  
2           to things like defending people in criminal  
3           cases but should not really cover standard  
4           commercial functions of buying a house, of  
5           setting up a company and so on. And I think  
6           certainly lawyers' trust accounts should be only  
7           used for very narrowly specified purposes.  
8           Direct -- not just as a pass-through mechanism  
9           through which people can camouflage or obscure  
10          financial trails.

11          Q     Not of course if the lawyer respectively serves  
12                as private banking for a client.

13          A     Exactly, yes.

14          MR. MARTLAND: Madam Registrar, if we could go down a  
15                little.

16          Q     Under the heading of "Legislation" you make a  
17                really interesting big picture comment with  
18                respect to -- I suppose really a foundational or  
19                definitional question, which is the question of  
20                what is criminal in nature and what money can be  
21                said to be illicit or criminal in its nature. I  
22                wonder if I could just ask you to spend a few  
23                minutes describing the point you're making there  
24                and why you see that as a point that is rarely  
25                addressed in the public discourse and the

1 literature.

2 A I think in talking about legalization, one of  
3 the reasons that it's very difficult to estimate  
4 how much money is laundered is as I say that the  
5 goal posts are moving. That some things become  
6 illegal where they previously have been illegal  
7 and vice versa. And even illegal things, some  
8 of them get drawn into -- some of them become  
9 predicate crimes for money laundering where they  
10 weren't before.

11 So if you look at public policy trends in  
12 different jurisdictions, including Canada, to  
13 the extent that you make things like certain  
14 classes of drugs, you move them from illegal to  
15 legal, to the extent that you legalize things  
16 like prostitution or gambling or pornography or  
17 conversely to the extent that they were legal,  
18 we make them illegal, then just by moving the  
19 legal goal posts, you're in some sense expanding  
20 or reducing money laundering not because people  
21 are behaving in any different way but simply  
22 because the legal classification of that  
23 behaviour have changed.

24 And in some sense the only sure way to  
25 reduce money laundering, to reduce crime is to



1 take things that are illegal and make them  
2 legal. And in some cases, of course, rightly  
3 that would never happen, but in many other  
4 public policy issues that there are reasonable  
5 debates about whether certain things should be  
6 illegal or legal. And standards -- legal  
7 standards and community standards change over  
8 time.

9 Q And I suppose as examples of those, perhaps sex  
10 work, gambling and drug -- which drugs are  
11 decriminalized or treated as criminal in nature,  
12 those are examples of some of those areas of  
13 policy decisions that different countries can do  
14 different things on.

15 A Definitely. And particularly where you have  
16 something like marijuana that may be one of the  
17 major sources of criminal assets, to the extent  
18 that you make selling marijuana legal, then at a  
19 stroke one of the predicate crimes disappears  
20 and the volume of money laundered has  
21 correspondingly been reduced.

22 MR. MARTLAND: Thank you. Mr. Commissioner, I'm  
23 about to move into the second part of this  
24 report where I'll be at a little brisker pace to  
25 work our way along, but I wonder if I might

1 suggest this as the point for the morning break,  
2 please.

3 THE COMMISSIONER: All right. Thank you,  
4 Mr. Martland. We'll take 15 minutes.

5 And I wonder if, Professor Sharman, you  
6 could contact our IT guru just to discuss the  
7 prospect of using your earphones because there  
8 still is I think a bit of an echo, at least when  
9 you begin your answer to Mr. Martland's  
10 questions.

11 THE WITNESS: Certainly.

12 THE COMMISSIONER: Thank you.

13 THE REGISTRAR: This hearing is adjourned for a  
14 15-minute recess until 9:55 a.m.

15 **(WITNESS STOOD DOWN)**

16 **(PROCEEDINGS ADJOURNED AT 9:39 A.M.)**

17 **(PROCEEDINGS RECONVENED AT 9:55 A.M.)**

18 **JASON SHARMAN, a witness**  
19 **for the commission,**  
20 **recalled.**

21 THE REGISTRAR: Thank you for waiting. The hearing  
22 is now resumed. Mr. Commissioner.

23 THE COMMISSIONER: Thank you. Yes, Mr. Martland.

24 MR. MARTLAND: Thank you very much.

25 Professor Sharman, I'm at page 12.

1                   Madam Registrar, I wonder if we might  
2                   continue to ploddingly work our way through the  
3                   report, although as I said, I'll probably speed  
4                   along through this next section somewhat more.

5                   **EXAMINATION BY MR. MARTLAND (continuing):**

6                   Q     At page 12 you have under the heading of  
7                   "Laundering Foreign Corruption Proceeds in  
8                   Canada," shifting into a different part of the  
9                   report. I just thought it might be useful as we  
10                  move into that to make sure I have a proper  
11                  understanding about what the focus of this  
12                  discussion is. So maybe I'll put the  
13                  proposition and invite you to improve on it or  
14                  tell me if I've got it correctly.

15                  I take it here in focusing on foreign  
16                  corruption proceeds, you're moving beyond the  
17                  broader question of money laundering activity  
18                  and looking at a subset of that, in particular  
19                  situations where there are -- there is money  
20                  stemming from foreign corruption moving and  
21                  being laundered into the legitimate economy. Is  
22                  that roughly accurate?

23                  A     Yes, that's correct.

24                  Q     And so I suppose notionally this isn't the  
25                  criminal gang or organization which is, let's

1                   say, dealing hard drugs and making money from it  
2                   within the borders of a city or an area so much  
3                   as the Marcoses, the Mobutus, the many unknown  
4                   or lesser known people who have pilfered money  
5                   from a country and are then trying to  
6                   effectively cleanse it move it to a safe locale  
7                   or destination.

8           A       Yes.

9           Q       All right. So that's very helpful. And I  
10           wonder as we move into the discussion, if you  
11           could offer your perspective on the extent to  
12           which you view this as a real issue of concern  
13           for British Columbia and for Canada.

14          A       Yeah. I certainly do regard it as an important  
15           source of concern for British Columbia and for  
16           Canada. I think as a multicultural society with  
17           a large stable financial sector, there's  
18           temptation for foreign corrupt officials to use  
19           the Canadian financial system or perhaps bits of  
20           it, like Canadian shell companies, to help in  
21           laundering money derived from corruption  
22           offences committed in other countries.

23          Q       Why do you see this jurisdiction as being  
24           vulnerable to that misuse?

25          A       I think any -- in some ways any OECD

1 jurisdiction is vulnerable simply because  
2 financial systems are set up in those countries,  
3 they're designed to be attractive to overseas  
4 investors, the stability of -- and  
5 predictability of property rights and good  
6 courts, sophisticated financial professionals  
7 there. And this will attract legitimate money,  
8 but unfortunately these same features will  
9 attract criminal funds, particularly when as  
10 we've talked about so far, there are problems in  
11 the general anti-money laundering system that  
12 means it's less effective than we might want.

13 MR. MARTLAND: Madam Registrar, if we could please  
14 display page 13, although I don't plan to read  
15 from it, but just to track along where I'm at in  
16 rough terms.

17 Q Professor Sharman, could you describe what you  
18 see as being the biggest threat of illicit  
19 foreign corruption proceeds making their way  
20 into British Columbia and Canada?

21 A I think that often the problem is in proportion  
22 to migrant communities from particular  
23 countries, especially if one country has a  
24 relatively high incidence of corruption. And I  
25 think many of the cases that have come up in

1 Canada and British Columbia but certainly in  
2 other jurisdictions too have been from  
3 corruption crimes committed in the People's  
4 Republic of China or greater China.

5 Q You make reference to that in the first full  
6 paragraph that's on display here about leaked  
7 evidence. And it's a curious way in which this  
8 report came about that I gather there was a  
9 report which was produced by the People's Bank  
10 of China in 2008 that I suppose was accidentally  
11 posted and taken down, but in the period during  
12 which it was existent online, it was scooped up  
13 and then published and gave insights.

14 A Yes, it actually -- it won a prize. It was  
15 meant to be secret, but of course it's not much  
16 point winning a prize unless you can tell your  
17 friends about it. And the people -- the  
18 authors were very proud and put the report on  
19 line and mentioned that it had got a prize, and  
20 they got in trouble for this and it was removed,  
21 but as you say exactly, in this brief window it  
22 was copied and then translated.

23 Q And that report referred to and described, you  
24 write here at the bottom of that paragraph, the  
25 scale of a huge problem between 16- and 18,000

1 officials from the People's Republic of China  
2 fleeing with some \$120 billion in the period of  
3 '93 through '08?

4 A Yes, that's true. I mean, I should say this is  
5 one particularly important source but by no  
6 means the only. And certainly pronouncements  
7 from many parties, including the Chinese  
8 government, indicate that this problem has not  
9 gone away in the interim, and they even have  
10 become more serious. But I think this report is  
11 almost unique in providing the Chinese  
12 government's own private view of the scale of  
13 the problem albeit now from a period that's  
14 obviously a little more than a decade old now.

15 Q A further source that you have. About three  
16 paragraphs down, you refer to the 100 most  
17 wanted list of allegedly corrupt fugitive  
18 officials who have left Canada [sic] and that a  
19 significant number of those are actually in this  
20 country, in Canada?

21 A Yeah. I think there's a great danger in  
22 taking -- just because the Chinese government  
23 says someone is corrupt doesn't mean that that  
24 person is actually corrupt, and I think that  
25 there's a danger or it's a very complicated

1                   situation with authoritarian governments not  
2                   subject to the rule of law that a person fleeing  
3                   may in fact be a political dissident who's  
4                   labelled as a corrupt official or the person may  
5                   be both. They may be a dissident and corrupt.

6                   But I think together with a range of  
7                   sources, many independent of the Chinese  
8                   government, that I think there is indeed a  
9                   genuine problem of corrupt officials fleeing  
10                  from China going to a range of other countries.  
11                  I think one of the most important destination  
12                  countries, both for the officials and their  
13                  money, is Canada.

14                Q    Does that dynamic create a problem of proof in  
15                    the, I guess, arriving recipient jurisdiction of  
16                    trying to look abroad and say -- and ask the  
17                    question, is that -- is this person and are  
18                    those funds related to foreign corruption. And  
19                    then in turn how does -- to use Canada as the  
20                    example, how do officials in Canada try to  
21                    measure out whether the person who has arrived  
22                    with funds from overseas or abroad, how do we  
23                    know that that is genuinely someone guilty of  
24                    criminal debt corruption as opposed to a  
25                    dissident or someone who's fleeing persecution



1                   who's effectively relocating their family and  
2                   their wealth?

3           A     I think it's hard but still the basic principles  
4                   of anti-money laundering apply. And for  
5                   example, if foreigners own property or have bank  
6                   accounts held through corporate vehicles, then  
7                   that should be transparent. I think that just  
8                   as any other Canadian citizen engaging in, you  
9                   know, large scale commercial activity that  
10                  there's some onus for the source of wealth.  
11                 Where did this money come from?

12                 So I'm not sure it's a matter of applying  
13                   extra scrutiny to those coming to Canada, but I  
14                   think as I say, of applying basic good  
15                   anti-money laundering practice that is helpful  
16                   in reducing the laundering of foreign corruption  
17                   proceeds along with many other types of  
18                   predicate crimes. But I do take the point that  
19                   it is just inherently more difficult when people  
20                   are coming from overseas and where their home  
21                   government may have political reasons to smear  
22                   them falsely with allegations of corruption.

23           MR. MARTLAND: If we could please go, Madam  
24                   Registrar, to page 14 in the middle of the page.  
25                   The heading there talks about "Comparative

1 Evidence on Hosting Foreign Corruption

2 Proceeds." You write:

3 "Rough rule of thumb is that countries  
4 probably host illegal wealth in proportion  
5 to the size of their financial sectors."

6 Who do you see as being the biggest players with  
7 respect to this dynamic of being the recipient  
8 jurisdiction of foreign corruption proceeds?

9 A I think the usual rule applies of guesswork and  
10 a lack of certainty, but on the available  
11 evidence it's seems like the United States would  
12 be the biggest host country for the proceeds of  
13 foreign corruption and that probably Britain and  
14 Switzerland would be other leading destinations  
15 to. But in some sense if you can rank financial  
16 sectors in order of the legitimate wealth they  
17 hold, that's probably a fair approximation of  
18 the illegitimate wealth they hold also.

19 Q Do you have a view on the likely magnitude of  
20 the problem for, let's say, mid-sized, to use  
21 the sort of parameters of earlier discussion,  
22 mid-sized OECD, English language or commonwealth  
23 countries such as Australia, Canada and New  
24 Zealand?

25 A I think it's substantial. And the major problem

1 is even if we don't know what proportion of  
2 foreign funds flowing into the country are the  
3 proceeds of corruption, that I think in Canada  
4 and Australia and Britain and elsewhere, that  
5 just the fact that you have really large volumes  
6 of money flowing into places like the real  
7 estate sector and very little scrutiny is  
8 applied, very little in terms of know your  
9 customer or proof of the source of wealth, then  
10 at the very least this creates a very severe  
11 risk and a vulnerability. Even if we can't put  
12 a figure and say a certain proportion of this or  
13 a certain absolute value respects the proceeds  
14 of corruption.

15 Q On page 15 of your report you turn to the three  
16 of the countries you just referred to, the US,  
17 Britain and Switzerland. And I wonder if you  
18 could sketch -- I don't need the level of detail  
19 in the paper, but give us a perspective on the  
20 kinds of responses or measures those  
21 jurisdictions have taken to deal with this issue  
22 of laundering foreign corruption proceeds.

23 A Very briefly. Up until maybe 20 years ago, they  
24 did nothing. So it was *de facto*. It was  
25 perfectly easy for foreign and corrupt officials

1           to move and launder their funds in those three  
2           countries. And it was either perfectly legal.  
3           Or even if it was illegal, then there was no  
4           enforcement. So the baseline is just nothing  
5           was done.

6                     And over the last 20 years, more or less,  
7           usually as a result of scandals, then these  
8           three countries have set up dedicated units in  
9           different parts of their government to try and  
10          combat this problem of foreign corruption  
11          proceeds being laundered in their jurisdictions.

12          Q        You talk about scandals being the driver. Does  
13                   that pertain to this sort of description of the  
14                   civil society, the NGOs, the journalists  
15                   reporting on things that tends to be the push  
16                   that actually causes change?

17          A        It does. And I think the exception to that  
18                   would be in the United States, the particular  
19                   role of the senate's permanent subcommittee on  
20                   investigations, which held a series of very  
21                   well-publicized hearings in the late 1990s and  
22                   around about the turn of the century that showed  
23                   that a variety of foreign corrupt heads of state  
24                   had been laundering and indeed were currently at  
25                   that time laundering funds in the United States.

1           Q     In Britain you single out the example of the  
2                   Nigerian dictator Sani Abacha and controversy  
3                   and notoriety around his relocation of funds  
4                   taken from that country into the UK?

5           A     That's true. And I think it also coincided with  
6                   Britain's big push on development and good  
7                   governance and the embarrassment the British  
8                   government felt on lecturing other countries  
9                   about their corruption problem when other  
10                  countries said well, it would help us to combat  
11                  corruption if you didn't host and launder all  
12                  the money or a large proportion of the money  
13                  generated. And that was embarrassing, coupled  
14                  with pressure from the media and NGOs, and hence  
15                  action belatedly from the British government.

16          Q     You talk about Switzerland a little lower on  
17                  that page. And in general terms you're  
18                  describing that there's been momentum and change  
19                  over the past two decades. I'll date myself a  
20                  little bit if we're back to the Roger Moore area  
21                  of James Bond films. The bank vault in Zurich  
22                  is the destination of ill-gotten gains where  
23                  they can be held in secrecy. But is that now a  
24                  dated reference? Have things changed in  
25                  Switzerland?

1           A     They have. Even in the *Casino Royale* more  
2                    recent James bond film, again, it's the Swiss  
3                    banker. But it does tend to show just like  
4                    stereotypes of tax havens in terms of tropical  
5                    islands lag the reality by a decade or two, so  
6                    too the stereotypes of Switzerland tend to lag  
7                    by a decade or two in terms of Switzerland is no  
8                    longer a congenial home for foreign corruption  
9                    proceeds.

10          Q     How has that changed in Switzerland or why?

11          A     I think it's changed because of bad press, both  
12                    abroad but also domestically in that the Swiss  
13                    government but also Swiss private industry,  
14                    including the finance industry, decided that  
15                    they would be better off, that really hosting  
16                    dirty money was not worth the reputational  
17                    damage. And for reasons I think just of esteem  
18                    as well as dollars and cents or Swiss francs,  
19                    that they thought they really had to clean up  
20                    their act.

21                    They did it in two parts. The first part  
22                    they said corruption and criminal funds are not  
23                    okay but tax evasion money is and then a bit  
24                    later on they decided that tax evasion money  
25                    wasn't really worth the problem either. Partly

1                   they were coerced in the second part by the  
2                   United States as well.

3           Q       If we go to the bottom of that page, you then  
4                   turn your discussion to Australia and suggest  
5                   that Australia's experience on this may be  
6                   relevant to Canada in general terms. What would  
7                   you describe as being the situation in Australia  
8                   for foreign corruption proceeds?

9           A       I think Australia is relevant for two reasons.  
10                   One in terms of the financial sector. It's  
11                   smaller than Canada but probably in the same  
12                   league as opposed to the different leagues of  
13                   the United States, Britain and Switzerland.

14                               And the second one is the Australian  
15                   government has really done very little to  
16                   respond to even pretty well-justified worries  
17                   about foreign corruption proceeds making their  
18                   way to Australia. And unfortunately I think  
19                   that inaction also characterizes what's  
20                   happening in Canada.

21           Q       Would you describe the problem in Australia as  
22                   being one rooted in a failure to write good laws  
23                   or have good systems designed or a failure to  
24                   implement and enforce or both?

25           A       I think much more the latter. That it's, again,

1 a failure of enforcement. Australia has very  
2 strong anti-money laundering laws which can be  
3 applied to foreign corruption. In some ways I  
4 think the laws are too strong in that they  
5 endanger some fundamental liberties and  
6 therefore, I mean, it's doubly unfortunate that  
7 you get these very draconian laws but the  
8 practical effect is very weak or almost nil when  
9 it comes to foreign corruption proceeds.

10 MR. MARTLAND: If we go to page 16, please, Madam  
11 Registrar.

12 Q A few -- maybe about a third of the way down,  
13 the heading is "Onshore Offshore." What is  
14 onshore offshore, please?

15 A So this is the idea that you can take a  
16 classically onshore, quote/unquote, normal  
17 jurisdiction like Britain or New Zealand or  
18 Canada, one that has a reputation for probity,  
19 for low corruption, for being a so-called clean  
20 jurisdiction, and yet these jurisdictions can  
21 offer non-residents classic secrecy products  
22 like untraceable shell companies or untraceable  
23 trusts in a way that in the 1990s a tax haven  
24 sort of offered these products. So it's the  
25 combination of products that give you a level of



1                    secrecy associated with offshore but the kind of  
2                    clean reputation associated with onshore  
3                    jurisdictions.

4            Q        When foreign corruption proceeds are moved into  
5                    shell companies that are held by or owned by  
6                    non-residents, what sort of issues come about  
7                    from that?

8            A        That basically you have a very effective  
9                    mechanism for laundering, that even if you have,  
10                   say, a Russian corrupt official using a Canadian  
11                   company to hold a bank account in Hong Kong,  
12                   then that becomes a very kind of complicated  
13                   problem for law enforcement or investigators to  
14                   unpick. And, you know, you've got this --  
15                   ostensibly the money is held by a Canadian legal  
16                   person, but there's no substantive tie to  
17                   Canada.

18                                And if investigators go to Canada and say,  
19                   who owns this company, then, again, they run  
20                   into the problem of the people who formed the  
21                   company simply may not have collected  
22                   information on the beneficial owner and hence  
23                   the beneficial owner has preserved his or her  
24                   illicit wealth.

25           Q        You make reference near the bottom of that page

1 to New Zealand shell companies in particular.

2 What's the picture with respect to New Zealand  
3 shell companies?

4 A New Zealand for, I think, the best reasons,  
5 decided to make foreign companies cheap and easy  
6 and very unbureaucratic as part of the  
7 deregulatory drive, and that makes sense. And  
8 as I referenced before, most companies are used  
9 for entirely legitimate purposes, so it's only  
10 fair that it should be easy and cheap to form  
11 them.

12 But this made it very easy for foreign  
13 criminals to get hold of untraceable New Zealand  
14 companies that were set up very quickly, very  
15 cheaply without having to divulge their  
16 identity. And again, they enjoyed the  
17 reputation of the country that often comes  
18 number one in Transparency International  
19 corruption perceptions index. And then you had  
20 problems of New Zealand companies repeatedly  
21 surfacing in scandals that ostensibly had  
22 nothing to do with New Zealand -- illegal arms  
23 trade between Iran and North Korea, Mexican drug  
24 cartels, theft of hundreds of millions of  
25 dollars from the Russian tax system -- and these

1                   were nevertheless linked back to New Zealand  
2                   shell companies and New Zealand corporate  
3                   service providers.

4           Q       At the bottom of page 17 or near the bottom of  
5                   page 17, you say:

6                               "The ultimate 'onshore offshore'  
7                               jurisdiction might be the United States."

8                   Why is that the case?

9           A       I think because, again, in practice the United  
10                   States has been incredibly lax in applying or  
11                   enforcing or even legislating beneficial  
12                   ownership standards, that -- again, as late as  
13                   23rd of December last year, I bought -- I set up  
14                   a US shell company, and I did not have to  
15                   provide any ID to do so, which is in violation  
16                   of international standards. And US corporate  
17                   service providers are very, very open on their  
18                   websites. They say, we sell secrecy; we don't  
19                   care who you are or what you're doing, we'll  
20                   provide you a shell company, a nominee director,  
21                   we'll wrap it in legal professional privilege  
22                   for you.

23                               So it's -- at the same time as the United  
24                   States in some ways sets itself up as the  
25                   paragon of virtue in financial standards, there

1                   is this incredible mismatch whereby in practice,  
2                   if you want to buy an anonymous shell company,  
3                   probably your first stop should be the United  
4                   States.

5           Q       The United States also seems to have a dynamic  
6                   of, I suppose, competition between states that  
7                   sort of race to the bottom. I know in some  
8                   earlier evidence from Oliver Bullough he  
9                   described North Dakota as not an obvious  
10                  destination but one with heightened secrecy  
11                  protections around company ownership as an  
12                  example. Is that a dynamic -- I'm interested if  
13                  that sort of dynamic within a country, within  
14                  provinces or states or cantons, I suppose, of a  
15                  country. Do you see that dynamic elsewhere  
16                  where there can be this sort of competition for  
17                  the most salable, the highest level of secrecy,  
18                  I suppose?

19          A       I think some of this competition, there  
20                  certainly has been some of that in the United  
21                  States. So places like North Dakota, also  
22                  Nevada have deliberately tried to undercut or  
23                  provide even more secrecy than other traditional  
24                  states that have got a lot of the business, like  
25                  Delaware. I think the evidence for this kind of

1 competition, there might be some in terms of the  
2 tax regimes previously of cantons in  
3 Switzerland.

4 I think the other complication, though, is  
5 that it's given the federal government, the US  
6 federal government slightly a "get out of jail  
7 free" card and when the United States federal  
8 government is rightly criticized for the poor  
9 performance of the United States, the US can  
10 say, constitutionally that's a state  
11 responsibility and so we the federal government  
12 can't really do much about it.

13 Q On page 18 at the top you make the comment that:

14 "Due to Canada's weak beneficial ownership  
15 standards -- "

16 It's just at the very top of that page.

17 "-- it may be in danger of becoming the  
18 'new New Zealand.'?"

19 What kind of fear are you describing, and what's  
20 the basis for that fear?

21 A I think, again, it's this combination of a high  
22 reputation for probity and low standards and lax  
23 enforcement, which can give criminals the best  
24 of both worlds in that sense. I think this is  
25 more than just a potential vulnerability in that

1 I gave some examples there of Canadian corporate  
2 service providers explicitly saying this and  
3 marketing the jurisdiction. And indeed when I  
4 set up my US shell companies in December of  
5 2020, one of the products that I noticed that US  
6 providers were selling were Canadian and British  
7 Columbian corporate vehicles.

8 In talking with private investigative  
9 agencies in London after I finished the report,  
10 they talked about the so-called snow washing and  
11 that they were seeing an increased use of  
12 Canadian corporate vehicles in complex  
13 cross-border financial crime. Exactly, again,  
14 that you can get offshore levels of -- what were  
15 previously seen as offshore levels of secrecy  
16 from an onshore jurisdiction that is regarded as  
17 pretty innocuous.

18 Q The next heading you refer to the comparative  
19 approaches to countering the laundering of  
20 foreign corruption proceeds and in particular  
21 talk about the US, the UK and Switzerland and  
22 the fact that they created specialized agencies,  
23 each differing in form and each detailed in your  
24 report.

25 You go on at the end of the first paragraph

1 under that subheading to say:

2 "Because of the institutional and personal  
3 disincentives described above, without  
4 such a specialised unit, it is unlikely  
5 that units with a general financial  
6 crime/AML remit will prioritise this sort  
7 of offence."

8 How vital do you see the specialized agency with  
9 this focus as being?

10 A I think general improvements to the anti-money  
11 laundering system would also improve the  
12 situation with foreign corruption funds, and to  
13 that extent things like improving the beneficial  
14 ownership system or improving the expertise of  
15 law enforcement in general. But I think if  
16 Canada is really interested in deterring and  
17 recovering and repatriating the proceeds of  
18 foreign corruption, it's really going to need  
19 something like a specialized unit because the  
20 set of skills here are fairly specialized.

21 But I think even more than that, there are  
22 so many incentives against investigating this  
23 sort of thing unless it's the specific job of  
24 some agency or some section which has been  
25 explicitly tasked and mandated to pursue this

1 mission.

2 Q And if we were turning to that question about  
3 what sort of specialized agency would be needed  
4 for British Columbia and Canada, do you have  
5 thoughts about what the mandate should be? And  
6 equally in terms of staffing, expertise and  
7 institutional structure and design, I suppose,  
8 thoughts on how that's best put forward?

9 A I think the US example has been very successful.  
10 They have had an anti-kleptocracy task force  
11 that's got strong bipartisan support from the  
12 time of George W. Bush onwards. It's a joint  
13 venture of the Department of Justice and the  
14 FBI. And it contains a mix of investigators and  
15 prosecutors as well who have a lot of  
16 international linkages and are very adept at  
17 using asset recovery strategies, particularly  
18 non-conviction based forfeiture approaches to  
19 asset recovery, who have got -- who have had  
20 very strong political support as well  
21 consistently over time.

22 And so this has really built up a career  
23 path and that you've had people working in these  
24 agencies now for over 10 years who are very  
25 skilled and very good at what they do.



1           Q     Discussing the non-conviction-based asset  
2                    forfeiture options that may be available in the  
3                    US, is the so-called geographic targeting order  
4                    an example of that?

5           A     Yeah. I mean, that's more of a way of getting  
6                    transparency than actually confiscating assets,  
7                    but it reflects the fact that the US, as with  
8                    any other jurisdictions, including Canada, have  
9                    found that real estate, again, is a common place  
10                   to launder money, not just for domestic  
11                   criminals but for foreign corruption proceeds as  
12                   well.

13                    And the geographic targeting orders are a  
14                    way to try and flush out that money to make it  
15                    more visible in such a way as it can then be  
16                    attacked. But also of course to deter dirty  
17                    money coming into the system in the first place.

18           MR. MARTLAND: Madam Registrar, if you could bring up  
19                    page 19 in the middle.

20           Q     You've got quite a string here in that paragraph  
21                    that begins "in the United States." You refer  
22                    to forfeiture cases brought by the US Department  
23                    of Justice against a whole unsavoury list of  
24                    foreign kleptocrats there. I take it that's  
25                    been a fairly muscular effort on the civil

1 forfeiture litigation front.

2 A It has, and it's been quite successful in, as I  
3 say, recovering roughly a billion and a half US  
4 dollars so far, and I think with more in the  
5 works.

6 Q On page 20 you have a heading that turns to the  
7 question of potential Canadian responses to  
8 laundering -- to the laundering of foreign  
9 corruption proceeds. Appreciating what you set  
10 out in your evidence as well as in the report,  
11 do you see particular measures as being what you  
12 would identify as being the top of the list for  
13 consideration in British Columbia and Canada?

14 A I think -- I mean, largely a specialized unit  
15 and then general improvements and things like  
16 beneficial ownership regulation and the  
17 transparency of property ownership. And then  
18 coupled with people generating the expertise,  
19 having the practice in using the various asset  
20 recovery strategies, particularly those suited  
21 to the return of assets that are generated by  
22 predicate crimes that have occurred abroad.

23 Q At the bottom of page 20, the start of the  
24 paragraph, you write:

25 "This unit --"

1 Talking here about a specialized unit that would  
2 come into play in the Canadian jurisdiction.

3 "This unit should specialise not just in  
4 attacking corrupt officials and their  
5 wealth, but also the Canadian banks and  
6 enablers who, through sins of omission or  
7 commission, assist in the local laundering  
8 process."

9 Why do you see that as an important feature or  
10 part of the work?

11 A I think it's mainly important in terms of  
12 building up a deterrent function. I mean, just  
13 like forming a shell company is not a  
14 do-it-yourself affair. If you're a foreign  
15 kleptocrat or corrupt official, you really need  
16 a lot of professional help to launder your  
17 money, maybe wittingly or unwittingly by a whole  
18 range of professions in the foreign  
19 jurisdiction. Some combination of bankers,  
20 lawyers, accountants, real estate agents.

21 And most of these or really all of these  
22 should have a duty to know their customer, to  
23 screen out dirty money. And I think one of the  
24 approaches that is badly underutilized is  
25 even -- say, in Britain, even when foreign

1           corruption funds are detected, then action might  
2           be taken against those funds and perhaps against  
3           the foreign official. Nigerian governors have  
4           been popular. But the hard questions that  
5           should be asked of the banks that handled that  
6           money, the real estate agents that handle  
7           transactions or the lawyers that help structure  
8           the affairs, those are not being asked.

9                     And I think really we're not going to solve  
10           the problem by convicting or even confiscating  
11           the assets of all the foreign corrupt officials  
12           because there are simply too many. And that if  
13           we want to achieve a big change, then we need to  
14           make jurisdictions, OECD jurisdictions  
15           inhospitable to foreign corruption funds and we  
16           do that by making intermediaries and  
17           professionals actually doing a thorough job of  
18           knowing their customer and screening out dirty  
19           money before it enters the system.

20           Q       On page 22 -- and, Madam Registrar, if you could  
21           bring that up, please. -- you have -- at the  
22           very last part of this section 2 of the report,  
23           the heading is "Countering Corruption Beyond the  
24           State." You refer -- this comes back to this  
25           point about the influence of civil society,

1                   journalists, NGOs, other reporters. I'll maybe  
2                   just -- but this is a bit of a general question.  
3                   It seems like with respect to money laundering  
4                   in contradistinction to other areas of crime, a  
5                   lot of the time the activity is being uncovered  
6                   by journalists, by NGOs, as opposed to police  
7                   officers.

8                   Now, if someone learned that bank robberies  
9                   were being reported [sic] by TV reporters, not  
10                  police officers that would seem striking. Is  
11                  there something about the nature of this  
12                  activity in particular that means that the  
13                  police are not necessarily observing it or  
14                  having it reported to them and yet where they're  
15                  motivated and paying attention, and there  
16                  reporters and activists do it?

17                A    Partly it may be -- reflect the problem earlier  
18                   of rather than too little information, too much,  
19                   that the suspicious activity reports or  
20                   Suspicious Transaction Reports, as they're  
21                   variously know. I mean, often there are  
22                   thousands of hundred of thousands or millions of  
23                   these. And so a financial intelligence unit,  
24                   there's simply so much noise that it's very hard  
25                   to pick up the signal.

1                   But then I think it's all the other features  
2                   as well as these are difficult and complicated  
3                   cases to investigate where the professional and  
4                   personal reward might be very uncertain. And so  
5                   as a result, they go uninvestigated. And it may  
6                   be particularly if you have powerful parties who  
7                   are -- you know, who stand to lose or stand to  
8                   be damaged, whether it's powerful local banks,  
9                   whether it's powerful foreign officials, that  
10                  often mean that governments or law enforcement  
11                  agencies just find it a lot easier to not  
12                  investigate and not ask awkward questions than  
13                  to investigate.

14                  Q     At the bottom of that page the heading is  
15                        "Confiscating Illegal Assets," and then onto the  
16                        next page, page 23, you write:

17                        "The single most important aim of AML  
18                        policy is to 'take the profit out of  
19                        crime,' thereby reducing the incidence of  
20                        predicate offences. To this end, it is  
21                        essential there be an effective system for  
22                        confiscating the proceeds of crime."

23                  What you turn to in this portion is a discussion  
24                  about different options for going about  
25                  confiscation. You say in the next paragraph

1                   that the discussion concentrates on  
2                   non-conviction-based forfeiture and civil asset  
3                   recovery, confiscation-based on tax powers and  
4                   UWOs, or unexplained wealth orders.

5                   So to work through those topics one by one,  
6                   first the NCBF measures. You've touched on this  
7                   before. What do you see as the need and the  
8                   role for NCBF, non-conviction based forfeiture,  
9                   and in particular thinking about the situation  
10                  in British Columbia and Canada?

11                A    I think that -- I mean, criminal prosecution  
12                   has -- particularly when it comes to large  
13                   complex financial crime that cross borders, the  
14                   criminal prosecution has just proved to be  
15                   really, really difficult. And this that has  
16                   created pressure, first in the context of  
17                   dealing with the drug trade and the later with  
18                   other sorts of money laundering crimes so to  
19                   make it easier for authorities to get criminals'  
20                   money and that there have been this constant  
21                   kind of innovation. And I think one of the  
22                   major ones is non-conviction-based forfeiture  
23                   and practices then being diffused  
24                   internationally as best practice by the  
25                   Financial Action Task Force.





1           Australian Federal Police has been so  
2           apprehensive about losing a court case to do  
3           with its confiscation powers that it's never  
4           actually used those confiscation powers, even  
5           though they were introduced more than 10 years  
6           ago.

7                       And even on the kind of more -- even on the  
8           more modest or everyday confiscation powers that  
9           people have to practice these, law enforcement  
10          have to practice using these to make them  
11          effective. And unless there's measures taken  
12          for that experience to accrue and be maintained  
13          and developed, then it doesn't matter what  
14          legislation you have; law enforcement are not  
15          going to use it.

16          Q       If we could go to page 24 and the heading "Civil  
17          Cases: A British Example." How do you see  
18          civil cases being employed and what is the  
19          British example?

20          A       I think -- I mean, if there's a basic problem  
21          of -- for complex financial crimes, you need  
22          advanced legal and accounting skills. And most  
23          of these legal and accounting skills are in the  
24          private sector, not in the public sector, partly  
25          as a result of pay differentials, partly as a

1 result of other things.

2 And so governments and purely private  
3 parties have therefore moved into --  
4 increasingly into the civil law system to try to  
5 recover assets. And I think the -- that there  
6 are some current examples before the British  
7 court, for example, to do with allegations of  
8 corruption in Mozambique where you can use the  
9 civil law system and use the expertise in the  
10 private sector to actually recover assets in a  
11 much more effective way than can be done through  
12 traditional criminal justice measures.

13 Q In that discussion about the civil cases in  
14 Britain, you refer to judges -- and this is not  
15 unfamiliar to some Canadian legal proceedings --  
16 have followed the route of using an irresistible  
17 inference that the assets represent the proceeds  
18 of foreign corruption. So not proof beyond a  
19 reasonable doubt of proof of the predicate crime  
20 but rather reaching a moment in the evidence  
21 that that irresistible inference allows for the  
22 conclusion to be reached.

23 A Yeah. One of the problems that -- one of the  
24 high hurdles that US cases have had to overcome  
25 is that, you might say commonsensically, if an

1           official has \$50,000 annual salary and  
2           \$200 million worth of assets, they got a lot of  
3           explaining to do between -- the mismatch between  
4           their legitimate earnings and the amount of  
5           assets they hold.

6                         And judges in the United States have been  
7           very careful to say that really nothing can be  
8           drawn from that, and that if assets are to be  
9           confiscated, then law enforcement or whoever  
10          [indiscernible] must link a specific asset.  
11          Whereas, as you say, Britain has more forgiving  
12          standards where the judge is able to say look,  
13          given the mismatch between legitimate wealth and  
14          this huge amount of excess wealth, given the  
15          credible allegations of corruption, given the  
16          lack of evidence from the other side explaining  
17          how this wealth was legitimately earned, then  
18          the judge can give a -- favour confiscation.

19          Q         Lower on that page you turn to unexplained  
20          wealth orders. It's a concept we have some --  
21          we've heard some evidence about and you've given  
22          a good definition there in that paragraph, so I  
23          won't ask you to offer that in your answer now.  
24          But do you have -- I wonder if you'd say that  
25          your view on unexplained wealth orders may be an

1                   area where you depart somewhat from some of the  
2                   prevailing or conventional wisdom as to their  
3                   effectiveness or utility?

4           A       Yeah, I think that particularly their  
5                   effectiveness in dealing with foreign crimes,  
6                   particularly laundering the proceeds of foreign  
7                   corruption, I think they're not the silver  
8                   bullet that they're made out to be. And I think  
9                   that's important because that was the main  
10                  rationale for introducing unexplained wealth  
11                  orders in Britain. And again, it's kind of got  
12                  a lot of play in the policy community that these  
13                  are the things that everybody should now have.

14                         And I think there are at least some reasons  
15                         for scepticism that it's early days but  
16                         unexplained wealth orders have had some hits but  
17                         also some misses in the UK. And I think that in  
18                         fact their impact is likely to be much more  
19                         modest than their proponents suggest and that  
20                         they're really in fact more useful for tackling  
21                         domestic crime than for tackling cross-border  
22                         crime.

23           Q       Today the -- at least from a news reader's point  
24                   of view it doesn't seem there's been extensive  
25                   use of them in the number of cases brought in

1                   the UK. It seems to be, I assume, strategic  
2                   litigation to only pursue certain cases.

3           A       Yeah, it does seem, again, as this risk  
4                   aversion. I mean, in talking to the NCA, they  
5                   seem to think that there are probably between  
6                   100 and 200 cases that they potentially could  
7                   bring, but they've only really brought two. So  
8                   at this current rate, it's going to take them  
9                   about a century to get through the cases that  
10                  they've now dealt with. Of course not helped by  
11                  the fact that they actually lost the last one in  
12                  2020.

13                         So even if they were starting with the  
14                         easiest possible cases, which I think they  
15                         probably were, the fact that the first one  
16                         probably didn't need an unexplained wealth  
17                         order, they could have gone straight to  
18                         confiscation and the fact that the second one  
19                         has failed, again, I think really gives pause to  
20                         the thought. I mean, in fairness it may be a  
21                         matter of practice, but again, I think they're a  
22                         bit overhyped.

23           Q       At the bottom of that page you raise a number of  
24                   concerns or problems that arise in relation to  
25                   these unexplained wealth orders, including among

1           that list extending the power of the state,  
2           reducing citizens' right and freedoms, the  
3           possibility as a result they're unconstitutional  
4           in given jurisdictions, that they can arguably  
5           weaken presumption of innocence and property  
6           rights and the right to silence.

7                         So those are some of the reasons that you  
8           don't ascribe to the view that these are a  
9           silver bullet solution.

10          A     I think there's two responses. One is they just  
11           might not work that well, pragmatically. And  
12           secondly, even if they did work well, there may  
13           be a cost that I think at the very least is  
14           worth thinking about in terms of fundamental  
15           rights and freedoms. I mean, it's one thing to  
16           say the presumption of innocence is really a  
17           nuisance and inconvenient when you are trying  
18           to put people in jail or confiscate their  
19           assets. And of course the answer is well,  
20           that's the point. That's -- you know, it should  
21           be hard to put people in jail; it should be hard  
22           to take away people's assets.

23                         So the presumption that anything that makes  
24           asset confiscation easier must be a good thing I  
25           think is a pretty unbalanced way of looking at

1 the problem.

2 Q To the extent that -- whether it's explained  
3 wealth orders or other asset forfeiture  
4 mechanisms, they broaden out significantly. Do  
5 you run into, I suppose to use a fishing  
6 analogy, a bycatch problem or an overcatch  
7 problem that you may sweep up innocent  
8 situations into the net of that recapture  
9 regime?

10 A Yes. I think it's also for some law enforcement  
11 agencies that have then been incentivized, for  
12 example, and the idea of keeping a certain  
13 proportion of the funds that they confiscate  
14 through non-conviction based forfeiture, it's  
15 had this rather perverse effect where law  
16 enforcement go after the most profitable sort of  
17 cases for them in a very direct sense rather  
18 than those that may maximize the public good.  
19 Even to the extent of people -- individual law  
20 enforcement agents saying, that's a nice car  
21 that drug dealer has; I wouldn't mind. So you  
22 do -- you want to in some ways incentivize law  
23 enforcement officers but not too much.

24 Q No. On page 26 this moves into the last topic  
25 from your paper and for my questions,

1 Dr. Sharman, and you've been very patient as  
2 I've fumbled around with them. This heading  
3 referred to "A Neglected Alternative: Using the  
4 Tax System." What are you describing here with  
5 respect to looking to tax recovery avenues?

6 A I think with the growth of the international  
7 anti-money laundering system there's also been a  
8 parallel growth in the international system to  
9 counter tax evasion. But despite their kind of  
10 common or at least complimentary aims and the  
11 means that they use, there's surprisingly little  
12 dialogue between the anti-money laundering  
13 policy community and the tax policy community.

14 And I think for all of the failings of the  
15 Australian system, which are long and numerous,  
16 that fact one of the work-arounds that's proven  
17 valuable in Australia to act as a functional  
18 substitute for conviction powers is using the  
19 tax system. And I think this can be used as a  
20 substitute in combatting domestic financial  
21 crime but also international financial crime as  
22 well.

23 And this is not only in terms of bringing  
24 charges like tax evasion, but also raising tax  
25 assessments as again kind of a functional



1                   substitute for confiscating illicit wealth.

2           Q        On page 27 in the middle you make -- you give  
3                   some description of that.

4           MR. MARTLAND: Madam Registrar, if we could go to  
5                   page 27, the third paragraph, please.

6           Q        At the start of that paragraph you write:

7                    "In practice, in challenging cases where  
8                    law enforcement officials are convinced  
9                    that an individual has significant wealth  
10                   derived from crime, it is left to the  
11                   Australian Tax Office to raise a tax  
12                   assessment against the individual."

13           I take it that's really a description of this  
14           sort of practical way forward that engages the  
15           tax mechanism. How does that tax assessment  
16           process work and how does that play out?

17           A        I think often that the police or law enforcement  
18                   either forms suspicions or have a criminal case  
19                   that fails. And maybe one of the options they  
20                   consider is these confiscation powers which they  
21                   don't use through lack of practice or through  
22                   worries about being -- having them overturned in  
23                   the courts and because there's unusually a  
24                   fairly close relationship between the anti-money  
25                   laundering law enforcement and tax community in

1           Australia. And the sense is that it's  
2           easier to use provisions of the tax code to say  
3           look, we think you are understating your income  
4           drastically and we think that you've been  
5           understating your income perhaps for several  
6           years into the past, so we're going to raise the  
7           tax assessment against you of X million dollars.

8                     And that's an administrative measure that's  
9           quite easy to do. The evidentiary threshold is  
10          quite low. And if the taxpayer wants to contest  
11          this, then they have to go through a series of  
12          procedures and through the courts. So really  
13          the onus is on the taxpayer to prove the tax  
14          office wrong rather than the tax office having  
15          to prove anything beyond a legal doubt.

16                    So, again, it's this idea of trying to get  
17          around the difficulty of proving things beyond a  
18          reasonable doubt and reversing the onus of  
19          proof.

20           Q        In Canada through jurisprudence there are  
21          certain restrictions or ground rules around how  
22          information may or may not be able to move  
23          between regulatory tax enforce -- tax functions  
24          and on the other hand a more criminal law sort  
25          of avenue. Do you think that -- do you have a

1 view on or are you able to comment on whether  
2 the Australian model is one that could be  
3 transposed to Canada?

4 A I think there would be some potential for  
5 learning but also some limits there, and I think  
6 you've accurately identified the main one. But  
7 in some ways Australia is unusual in that tax  
8 and anti-money laundering information are  
9 routinely shared on an administrative basis and  
10 there's very little of a wall between them.

11 I think that that creates some benefits but  
12 also some big costs. The kind of idea of the  
13 authority saying, we know you're guilty, but we  
14 can't prove it, but we're going to take away  
15 your money anyway, obviously pushed to its  
16 logical extreme that has some worries. And  
17 someone who takes privacy rights seriously, so I  
18 think although it's inconvenient in some ways,  
19 that it's entirely appropriate that Canada puts  
20 at least some levels of barrier that, you know,  
21 severely regulates and limits the exchange of  
22 information between the tax authorities and  
23 other parts of the government, including law  
24 enforcement.

25 MR. MARTLAND: Dr. Sharman, thank you.

1                   Mr. Commissioner, that completes my  
2                   questions.

3           THE COMMISSIONER: Thank you, Mr. Martland.

4                   I'll now call on Ms. Addario-Berry for the  
5                   province, who has been allocated 15 minutes.  
6                   And I should -- just before you commence,  
7                   Ms. Addario-Berry.

8                   Professor Sharman, if you would like a break  
9                   at this point, we can certainly take one, or we  
10                  can forge ahead for a period and then take one  
11                  later. I leave it up to you. Are you content  
12                  with going ahead or would you like to break at  
13                  this point?

14          THE WITNESS: I'm content with going ahead. Thank  
15                  you.

16          THE COMMISSIONER: Thank you. Yes, Ms. Addario-Berry.

17          MS. ADDARIO-BERRY: Thank you, Mr. Commissioner.

18           **EXAMINATION BY MS. ADDARIO-BERRY:**

19          Q     Professor Sharman, can you hear me okay?

20          A     Yes.

21          MS. ADDARIO-BERRY: Thank you. Madam Registrar,  
22                  could you please pull up page 10 of  
23                  Dr. Sharman's report. Thank you.

24          Q     I'm going to read from the third paragraph down  
25                  which starts with:

1                   "Yet despite the current popularity of  
2                   beneficial ownership registries there is a  
3                   striking lack of evidence that they do  
4                   actually help in deterring, detecting or  
5                   combating money laundering and related  
6                   financial crime."

7                   My question, Dr. Sharman, is what sort of  
8                   evidence would you like to see coming out of  
9                   beneficial ownership registries to show that  
10                  they are in fact deterring, detecting or  
11                  combatting money laundering?

12                A    I think it would be great if there were cases  
13                   that were happening now in the UK where police  
14                   would come out and say, and a big important part  
15                   of us being able to break this case is because  
16                   we looked at the persons of significant control  
17                   registry and that gave us really useful  
18                   information. Or if we had NGOs, like Global  
19                   Witness or Transparency International or  
20                   investigative journalists, who say, you know,  
21                   we've got wind of this big corruption case, this  
22                   big money laundering case, and the way that we  
23                   did that is by joining the dots by using  
24                   beneficial ownership information that came from  
25                   the registry.

1                   In fact, we haven't really seen any cases  
2                   either formally from the government sector or  
3                   informally from the NGOs from civil society or  
4                   from investigative journalists. And, you know,  
5                   after a few years you would expect that.

6                   The other thing that makes me sceptical is  
7                   that there's been, first off, the NGOs that  
8                   campaigns for registries have said that they're  
9                   not particularly well administered or funded,  
10                  and finally that there's been very low  
11                  enforcement in terms of people who just don't  
12                  fill out the forms that they should or fill them  
13                  out in an obviously untrue manner.

14                Q    Okay. So it's not so much that you're looking  
15                  for particular statistics to be reviewed in a  
16                  given jurisdiction before and after a registry  
17                  is created?

18                A    I think it would be nice if you could have  
19                  things like this year we've had 1,000  
20                  enforcement actions from people who made false  
21                  declarations in terms of the beneficial  
22                  ownership registry. Or if there was some  
23                  notable increase in the number of convictions or  
24                  asset confiscation that were taken against shell  
25                  companies or those who use them, again, on the

1 basis directly or indirectly of information held  
2 in that registry. But it's been a few years and  
3 at least to my knowledge we haven't seen that so  
4 far.

5 Q Okay. And a little further down, 1.3.2, the  
6 bullet heading refers to "regulating corporative  
7 service providers," and I've noticed in the  
8 report there's -- it mentions both corporative  
9 service providers and corporate service  
10 providers. Could you clarify, are those  
11 referring to the same sort of entity?

12 A Sure. Yeah, sorry. That should be corporate  
13 service providers, which the FATF refers to as  
14 trust and corporate service providers.

15 Q And in your research and review in preparing  
16 this report, did you come across unregulated  
17 corporate service providers either in British  
18 Columbia or Canada more generally?

19 A Yeah. My impression is that there's not a  
20 requirement and indeed I think it was from the  
21 sources of 2018, Canada finance minister's --  
22 finance ministry report that in fact CSPs are  
23 not regulated in Canada or at least they may  
24 only be caught incidentally through other  
25 things. CSPs is kind of an umbrella term. They

1                   may be law firms. They may be accountancy  
2                   firms. They may be someone in their garage. So  
3                   they might be caught under a different part of  
4                   the regulatory regime, but to my knowledge  
5                   corporate service providers as a class, TCSPs in  
6                   their Financial Action Task Force, are not  
7                   regulated.

8                   MS. ADDARIO-BERRY: Okay. Madam Registrar, could you  
9                   please scroll down a little further to page 11.  
10                  That's great. Thank you.

11                  Q    And under the heading of "Holding Directors  
12                   Accountable," which you discussed in your  
13                   evidence earlier, you mentioned another  
14                   complimentary solution is to require at least  
15                   one local resident director for any given  
16                   company. Are you referring to the British  
17                   Columbia *Business Corporations Act* provisions  
18                   that there are no residency requirements for  
19                   directors and how this can be helpful for  
20                   foreign parties that are wishing to incorporate  
21                   in Canada?

22                  A    This was actually a general comment that a  
23                   common problem is that people who ostensibly  
24                   should have some responsibility for the company,  
25                   i.e. the director, in practice can escape this.



1                   And to hold directors accountable they really  
2                   need to be in the same jurisdiction as the  
3                   company that's been formed, which may seem like  
4                   it's obvious, but in fact it's very common to  
5                   have either corporate directors, so one company  
6                   as the director of another company or  
7                   non-resident directors. And that basically  
8                   means that they're beyond the reach of the law.

9                   And one of the reforms that New Zealand took  
10                  to get out of its earlier problems was to make  
11                  sure directors were resident and make sure they  
12                  really got in trouble if a shell company or a  
13                  New Zealand company ran into trouble.

14                Q    Okay. And so I take it from your answer you  
15                  didn't engage in any sort of extensive review of  
16                  the provisions of the British Columbia *Business*  
17                  *Corporations Act* or the federal equivalent of  
18                  that?

19                A    That's correct, yeah. It's a conclusion based  
20                  on evidence from other jurisdictions.

21                Q    Okay. Can we turn to page 18 of your report,  
22                  please. So I'm just looking at the last  
23                  sentence in the top paragraph:

24                                "As noted earlier, trusts are often  
25                                unregistered, and as such completely below

1                   the radar. Limited Partnerships and  
2                   Limited Liability Partnerships have also  
3                   been mentioned as vulnerability,  
4                   especially with the use of a nominee  
5                   partner."

6                   From your previous answer I think I know the  
7                   answer to this, but when you're referring to  
8                   nominee partners, is this more of a general  
9                   statement or have you seen this in the Canadian  
10                  context being used?

11                 A     Yeah, you're right. And that's a general  
12                   statement based particularly on the Scottish  
13                   experience. The only point where it would  
14                   specifically relate to British Columbia is in  
15                   looking at corporate service providers' websites  
16                   in December of last year that Canadian limited  
17                   partnerships and limited liability partnerships  
18                   are being sold by at least some corporate  
19                   service providers as a secrecy product.

20                 Q     Okay. Thank you. My next question relates to  
21                   page 24 of this report. And, again, in the top  
22                   section starting from "there are many stories of  
23                   the accidental or deliberate misuse." Sorry,  
24                   perhaps I should mention I'm now discussing the  
25                   non-conviction based forfeiture topic. And it

1                   says:

2                    "There are many stories of the accidental  
3                    or deliberate misuse of confiscation  
4                    powers by law enforcement, particularly in  
5                    the [US], but those writing on  
6                    confiscation implicitly seem to assume  
7                    that these miscarriages of justice are a  
8                    price worth paying."

9                   Have you seen any of these sort of miscarriages  
10                  of justice in confiscation in the Canadian  
11                  context?

12                A    No, I haven't. I think partly because they're  
13                    comparatively rare, but no.

14                Q    Okay. And moving on a little further on the  
15                    same page under the "Unexplained Wealth Orders  
16                    and Illicit Enrichment Laws." In your evidence  
17                    earlier we covered this somewhat, but you said  
18                    that unexplained wealth orders arguably weaken  
19                    the presumption of innocence, property rights  
20                    and the right to silence. And I think you'll  
21                    agree with me that the presumption of innocence  
22                    is a concept that typically is applied to  
23                    criminal cases?

24                A    Yeah. I mean, unexplained wealth orders and  
25                    illicit enrichment are often run together, so I

1                   mentioned the islands, Britain and Australia  
2                   have related but distinct things, and I think  
3                   for both and the policy problem that the British  
4                   government was looking to solve is, again,  
5                   frustration with a criminal threshold of proving  
6                   things beyond a reasonable doubt.

7                   And so the idea is we want to take away your  
8                   house and doing it through the criminal justice  
9                   system with a presumption of innocence is very  
10                  difficult, so we're going to do it some other  
11                  way. And some other way would be through  
12                  illicit enrichment laws or through an  
13                  unexplained wealth provision. So yes, certainly  
14                  the presumption of innocence is for criminal  
15                  justice, but, again, that's the frustration with  
16                  that rule is the reason that we have illicit  
17                  enrichment laws or unexplained wealth orders.

18                  Q     Okay. And I have a general question regarding  
19                  your report. Where you have cited media  
20                  articles in your footnotes, is it fair to say  
21                  that you didn't undertake a second level review  
22                  of source documentation but rather you accepted  
23                  the veracity of facts that were reported in  
24                  articles at their face value?

25                  A     I checked on the veracity of things reported in

1           the press if they fit the pattern that other  
2           literature had shown. So, for example, the FATF  
3           mutual evaluation report on Canada in 2016, that  
4           if there was a strong claim in the press about a  
5           particular failing of the Canadian anti-money  
6           laundering system, I think definitely in most  
7           cases, perhaps even all, I made sure that that  
8           was supported by or in agreement with other  
9           sorts of documents.

10                   As I say, either from the Canadian  
11           government, from international reviews, from my  
12           academic work or other policy work I've done.  
13           But you're right that I didn't go back and check  
14           original court transcripts to do with -- from  
15           those media stories. That's correct.

16           Q       Okay. And my final question is just related to  
17           the mystery shopping expedition that you  
18           mentioned and your purchasing of anonymous shell  
19           companies, setting them up, corresponding bank  
20           accounts. And I was wondering after you have  
21           undertaken this particular exercise, do you  
22           typically dissolve these companies, or do you  
23           undertake further sort of experiments or  
24           investigations with the corporate vehicles that  
25           you create through your research and

1 investigation?

2 A It varies. So for the earlier ones they're  
3 dissolved. There has to be -- for companies  
4 there's an annual upkeep fee. So even though  
5 it's relatively small, to the extent that I'm  
6 not using them anymore, I just allow them to  
7 lapse. Mostly what I'm interested in is can I  
8 set them up anonymously. I'm currently doing  
9 the some work, again with the Mike Findlay and  
10 Dan Nielson, so we have some -- currently some  
11 companies set up there because we're currently  
12 using them in an academic research. But, again,  
13 once we finish that research, we would allow  
14 them to lapse and dissolve them.

15 MS. ADDARIO-BERRY: Thank you, professor. Those are  
16 my questions.

17 THE WITNESS: Thank you.

18 THE COMMISSIONER: Thank you, Ms. Addario-Berry.

19 We'll call now on Ms. Gardner on behalf of  
20 Canada, who has been allocated 15 minutes.

21 MS. GARDNER: Thank you, Mr. Commissioner.

22 **EXAMINATION BY MS. GARDNER:**

23 Q Professor Sharman, can you hear me okay?

24 A Yes, thank you.

25 MS. GARDNER: Thank you. Madam Registrar, if we

1                   could pull up page 1 of Professor Sharman's  
2                   report, please. That's perfect. Thank you.

3           Q       So I just want to take you back to the second  
4                   paragraph here. And I think you may recall  
5                   Mr. Martland asking you some questions about the  
6                   end of this paragraph. And in my notes I have  
7                   that you very fairly acknowledged that you don't  
8                   purport to speak authoritatively about details  
9                   of the Canadian regime. Is that -- do you  
10                  recall giving that evidence?

11           A       Yes.

12           Q       And Mr. Martland took you through your rather  
13                   lengthy CV and I don't think we need to go there  
14                   again, but is it fair to say that you haven't  
15                   previously published any peer-reviewed articles  
16                   that focus specifically on the Canadian  
17                   anti-money laundering regime?

18           A       Yes, I've referred to the Canadian example in  
19                   some of the things I published, but I haven't  
20                   had any dedicated publication that's been  
21                   specifically on the Canadian money laundering  
22                   system. That's fair.

23           Q       And then in this final sentence of paragraph 2  
24                   here you note that a similarly qualified  
25                   Canadian expert will know the local

1                   circumstances better. So I take it there that  
2                   you're indicating that, you know, to the extent  
3                   there may be some disagreement about specific  
4                   details of the regime, you would defer to a  
5                   Canadian expert on those points?

6                   A     Yes.

7                   Q     Okay. Now, I just have a few questions for you.  
8                   I just want to go through a few portions of your  
9                   report with you to ensure there is some clarity  
10                  about a few specific aspects of the Canadian  
11                  regime.

12                 MS. GARDNER: So, Madam Registrar, if we could turn  
13                  to page 2, please.

14                 Q     Now, Mr. Martland took you to this portion as  
15                  well. I'm looking here at the section titled  
16                  "Cash." And in the middle of that section  
17                  you'll recall he took you to this portion where  
18                  you're describing the Canadian policy of often  
19                  returning undeclared cash to those detected  
20                  carrying it through the border with very small  
21                  penalties. And you say that to an outsider this  
22                  policy seems like an incredible favour to  
23                  international money launderers.

24                         So I'm interested here in two concepts, the  
25                         concept of undeclared cash and the concept of



1                   proceeds of crime or what we might call illicit  
2                   cash. I take it you'd agree that those terms  
3                   aren't synonymous?

4           A       Yes.

5           Q       There are reasons that a traveller might fail to  
6                   declare legitimate cash?

7           A       I think in many jurisdictions the failure to  
8                   declare it makes those proceeds illicit. They  
9                   become illicit simply by the fact of not having  
10                  been declared.

11          Q       But they are necessarily prior to that failure  
12                  to declare proceeds of crime or cash otherwise  
13                  derived from criminality?

14          A       Yeah, they only become criminal at the point  
15                  they're not disclosed. Yes, I agree.

16          Q       And then I just want to ensure there's some  
17                  clarity about how the Canadian regime treats  
18                  those two concepts we've just discussed, the  
19                  undeclared cash and the illicit cash or  
20                  suspected proceeds of crime.

21                         So is it your understanding that the regime  
22                         treats those two differently?

23          A       No. I mean, undeclared -- I mean the FATF  
24                  standards pretty clearly mandate that people  
25                  transporting a certain amount of money across

1                   borders must declare them and that countries  
2                   should introduce legislation to that effect.  
3                   And merely the act of transferring money across  
4                   borders is in and of itself a crime and in some  
5                   jurisdictions in fact the most common kind of  
6                   money laundering conviction is undeclared wealth  
7                   with no connection to any other crime. The  
8                   entire money laundering prosecution merely rests  
9                   on the fact the predicate crime is the failure  
10                  to disclose.

11                Q     Right. Okay. So that was my inexact question.  
12                   I meant to ask is it your understanding that the  
13                   Canadian cross-border currency seizure regime  
14                   treats undeclared cash differently from how it  
15                   treats suspected proceeds of crime?

16                A     Yeah, drawing on the 2016 FATF report. Yes.

17                Q     And so you would agree, then, that if a border  
18                   officer suspects that a traveller may have  
19                   proceeds of crime that they're carrying across  
20                   the border, that that's treated differently than  
21                   unreported cash more generally?

22                A     Again, I'm not really -- if you have \$20,000 in  
23                   a suitcase, if you haven't declared it, it  
24                   doesn't matter where that money comes from. It  
25                   becomes criminal. And if it's found in the

1 border, again, FATF standard is pretty  
2 long-standing. *Ipsa facto* it becomes criminal  
3 by the failure to disclose. There's no need to  
4 work out the origins of it.

5 Q Okay. I think that it might be helpful --  
6 you've cited in your report a 2018 Department of  
7 Finance report titled "Reviewing Canada's  
8 Anti-Money Laundering and Anti-terrorist  
9 Financing Regime."

10 MS. GARDNER: Madam Registrar, if we could pull up  
11 that report, please.

12 Q And I'm not sure if you have it before you in  
13 hard copy, but it's also on the screen here. Do  
14 you recognize this as the report you reviewed  
15 and cited in your report?

16 A Yes.

17 MS. GARDNER: Mr. Commissioner, I might ask this be  
18 marked as an exhibit at this stage as I will ask  
19 a few questions about it and I would hate to  
20 neglect to mark it later on.

21 THE COMMISSIONER: All right. That's fine. I  
22 just -- has that been marked already,  
23 Mr. Martland? Do you know?

24 MR. MARTLAND: I was just trying a search of our list  
25 of exhibits and I don't see the word "reviewing"



1                   suspect that they are proceeds of crime or  
2                   funds for terrorist financing."

3                   So coming back to that distinction, then, would  
4                   you agree that where there are reasonable  
5                   grounds to believe that the funds are proceeds  
6                   of crime, that those funds are forfeited, which  
7                   means to say they are not returned to the  
8                   traveller?

9                   A     I can say that for this -- that yes, that would  
10                   apply, but it also seems to leave out or create  
11                   a presumption that the onus is on the law  
12                   enforcement to say that you have to have a  
13                   reasonable suspicion of the criminal origins of  
14                   these funds.

15                   Now, if this is the law that applies in  
16                   Canada, that's fine, but it's not in line with  
17                   the FATF standards, which I think the FATF  
18                   commented on. And it seems as I say, a very  
19                   gentle system that one that tends to favour the  
20                   money launderers. I certainly wouldn't argue  
21                   that if you say that's the law in Canada, I  
22                   would certainly defer, but it doesn't seem in  
23                   line with the FATF standards and it does seem a  
24                   way that to -- that it makes life easier for  
25                   money launderers.

1 MS. GARDNER: Okay. Madam Registrar, if we could  
2 return to professor Sharman's report, please.  
3 I'll ask you to turn to page 6 of that report.

4 THE WITNESS: Sorry, could I just make one other  
5 point on the previous one?

6 MS. GARDNER:

7 Q Sure. Yeah.

8 A I was just looking at the footnote. So in the  
9 executive summary of the Financial Action Task  
10 Force 2016 mutual evaluation report, the  
11 majority of cash seized by the Canada Border  
12 Services Agency is returned to the traveller at  
13 the border. That's for falsely and undeclared  
14 cross-border movements of currency. And bearer  
15 negotiable instruments.

16 Again, I stick by the report -- by the  
17 comment in the report. That's not a good  
18 situation if you have most of the money that's  
19 been falsely or not declared returned to the  
20 traveller. It doesn't seem like a good idea to  
21 the FATF; it doesn't seem like a good idea to  
22 me.

23 Q Okay. Thank you. So looking at page 6 of your  
24 report. Just looking here at the second  
25 paragraph under "Beneficial Ownership

1                   Regulation." I believe Mr. Martland may have  
2                   taken you to this general area. And you say:  
3                   "Completely at odds with the most basic  
4                   rules of AML, Canada allowed bearer share  
5                   companies (where whoever holds the  
6                   physical share certificates owns the  
7                   company) until very recently, meaning that  
8                   ownership is completely untraceable."

9                   MS. GARDNER: And now, Madam Registrar, I apologize,  
10                  as I don't see it up there anymore, but I was  
11                  hoping to return again to that Department of  
12                  Finance report we marked previously. Thank you.  
13                  And if we could turn to page 18 of that report.  
14                  If you could scroll down to the bottom for me,  
15                  please.

16                  Q     So I'm just looking here at the final paragraph  
17                  on this page, halfway down, it says:

18                         "Jurisdiction over incorporation is shared  
19                         between the federal and provincial/  
20                         territorial governments with approximately  
21                         9% of corporations in Canada established  
22                         under the federal *Canada Business*  
23                         *Corporations Act.*"

24                  MS. GARDNER: And then, Madam Registrar, if we could  
25                  just scroll to the next page.

1           Q     Which I believe was the citation you provided,  
2                    professor, for your report, page 19. So the  
3                    second to last paragraph here starting with the  
4                    "the minister," states:

5                            "The Minister of Invasion, Science and  
6                            Economic Development tabled Bill C-25 in  
7                            September 2016 to support Canada's  
8                            compliance with the FATF standards with  
9                            respect to prohibition from using bearer  
10                           shares. While the *CBCA* has required that  
11                           shares be in registered form since 1975,  
12                           the bill includes amendments to the *CBCA*  
13                           and the *Canada Cooperatives Act* that, once  
14                           passed, will prohibit the issuance of  
15                           options and rights in bearer form and  
16                           require that corporations presented with  
17                           bearer instruments convert them into  
18                           register form."

19                    Appreciating that was a lot of reading out loud.  
20                    What I'm interested in here is the portion in  
21                    the middle about the *CBCA*. So is it your  
22                    understanding that the federal legislation, the  
23                    *CBCA*, has required that shares be in registered  
24                    in form since 1975?

25            A     The way for me was the provincial. So, for



1           example, there was reference to making best  
2           available efforts to get rid of bearer shares at  
3           the provincial level by the 1st of July 2019.

4                     Now, even assuming that best available  
5           efforts means that bearer shares were all gone  
6           by 2019, which I think is an optimistic reading  
7           of best efforts, 2019 is incredibly late to get  
8           rid of bearer shares, that in -- again, classic  
9           tax have jurisdictions got rid of 20 years  
10          earlier. But, you know, saying for argument's  
11          sake that bearer shares are now completely gone  
12          at the federal and the provincial level,  
13          assuming it happened in 2019 or thereabouts, I  
14          think the point still stands that's very late.  
15          Other jurisdictions got in big, big trouble for  
16          having bearer shares 20 years ago.

17          Q        But again, just for clarity, then, at the  
18          federal level, shares have been required to be  
19          in registered form since 1975, not 2019?

20          A        That's not much consolation if you can get a  
21          Manitoba or other company in bearer shares.  
22          Again, just like the United States federal  
23          government tends to say oh, well, beneficial  
24          ownership, that's a state problem. And  
25          technically they're correct, but that's really

1 not much consolation if your jurisdiction is  
2 being used to launder money either from  
3 criminals at home or abroad. And so too while  
4 it's good that the Canadian federal government  
5 has got rid of bearer shares, that's not really  
6 any consolation if they're freely available at  
7 the provincial level.

8 MS. GARDNER: Okay. Thank you. And I'll just return  
9 briefly for my final few questions here to your  
10 report, please.

11 Madam Registrar, page 26 of Professor  
12 Sharman's report. Thank you. If you could just  
13 scroll to the bottom, please.

14 Q And I'm just looking at the bottom of the first  
15 paragraph under the "Neglected Alternative:  
16 Using the Tax System" heading where you say:

17 "While there is some *de facto* co-operation  
18 between Canada Revenue and Canadian law  
19 enforcement in confiscating criminal  
20 assets, such instances seem to be much  
21 more the exception than the rule."

22 And again, I think you've already quite fairly  
23 acknowledged this and you weren't able to come  
24 to Canada while preparing your report to conduct  
25 interviews and that sort of thing, but for

1                   clarity you've never been employed by the Canada  
2                   Revenue Agency or Canadian law enforcement  
3                   agencies; is that correct?

4           A       That's correct.

5           Q       And you'd agree, then, you don't have direct  
6                   knowledge of the work those agencies do or the  
7                   manner in which they undertake that work; is  
8                   that correct?

9           A       Actually, the only interview I did do was with a  
10                   former member of the Canada revenue authority.  
11                   So I'm not sure if that counts. I certainly --  
12                   that doesn't mean I worked for the Canada  
13                   Revenue, but the only interview I did was  
14                   someone from the CRA, a former member of the  
15                   CRA. You could fairly say that one person is a  
16                   fairly limited basis to draw that on. It's also  
17                   a point from the FATF report.

18          Q       Okay. But you didn't, for example, receive any  
19                   statistical information from Canada Revenue  
20                   Agency or Canadian law enforcement agencies  
21                   about the extent to which they might collaborate  
22                   or share information between them; is that fair?

23          A       I got those statistics from the 2016 FATF  
24                   report. But you're correct, not directly from  
25                   those agencies.

1           Q     So you don't have -- we could call it systemic  
2                    knowledge, systematic knowledge about the level  
3                    of cooperation between those parties?

4           A     Well, yes, in the sense that from the documents  
5                    from the Canadian government and that's exactly  
6                    the kind of knowledge that mutual evaluation  
7                    reports by the FATF -- that's what they are is  
8                    to provide systematic knowledge about the  
9                    anti-money laundering system. One aspect of  
10                   that is information sharing between different  
11                   bits of the government. Now, 2016 is a while  
12                   ago. Maybe things have changed in the last five  
13                   years.

14          MS. GARDNER: Okay. Those are all my questions.

15                    Thank you. Thank you, Mr. Commissioner.

16          THE WITNESS: Thanks.

17          THE COMMISSIONER: Thank you, Ms. Gardner.

18                    I'll turn now to Ms. Herbst on behalf of  
19                    the Law Society of British Columbia, who has  
20                    been allocated 10 minutes.

21          MS. HERBST: Thank you, Mr. Commissioner.

22          **EXAMINATION BY MS. HERBST:**

23          Q     And thank you, Professor Sharman. I just have a  
24                    few questions to start off with in terms of your  
25                    CV, although I don't think we need to turn to



1                   relevant.  It's called *Outsourcing Empire: How*  
2                   *Company-States Shaped [sic] the Modern World.*

3                   Now, that's a book where I understand you trace  
4                   corporate imperialism back to the English and  
5                   Dutch, East India companies and so on.  Is that  
6                   related to money laundering in some way, or ...

7           A        No, it's got the Hudson Bay Company in there,  
8                   but that's the only Canadian link, and it's not  
9                   a money laundering link.

10          Q        All right.  And those companies, I take it,  
11                   aren't shell companies either.  They may have  
12                   other attributes but may not have been  
13                   desirable, but that's not among them?

14          A        That's correct.

15          Q        All right.  Now, you noted with -- when speaking  
16                   with Mr. Martland that understandably you didn't  
17                   travel to Canada during the pandemic and did  
18                   almost nothing by way of interviews.  And this  
19                   came up with Ms. Gardner as well.

20                    Could you just confirm.  You didn't  
21                   interview any representative of a Canadian law  
22                   society in preparing your report?

23          A        That's correct.

24          Q        Now, you noted very fairly in your testimony and  
25                   on page 1 of your report that with respect to

1 Canada specifically, you looked at a number of  
2 specific sources like Dr. German's report and  
3 you set them out in your bibliography.

4 In reviewing your bibliography I didn't see  
5 any references to, for example, the websites of  
6 Canadian regulators, like gaming regulators or  
7 accounting regulators or law societies. Is it  
8 fair to say you didn't consult those websites  
9 directly when preparing your report?

10 A I didn't list every website I looked at in the  
11 bibliography, but I think yes, the substance of  
12 your question is fair. I didn't look at those  
13 websites. But as I say, I've looked at the  
14 websites of various corporate service providers  
15 and other things. So the bibliography is not  
16 exhaustive for the websites, but I didn't look  
17 at the websites of those bodies you mentioned.

18 Q Okay. And I take from that as well that you  
19 didn't review -- and I'm not suggesting you  
20 should have. I know your report was very broad.  
21 You didn't review specifically the rules or  
22 guidelines that those regulators might have in  
23 place in relation to anti-money laundering?

24 A Only as far as they were covered in the  
25 documents that were referenced in the

1                    bibliography. So you're right that it wasn't  
2                    specific reports by the organizations but those  
3                    measures were covered in quite a few of the  
4                    sources in the bibliography.

5            Q        Right. So to the extent that Dr. German might  
6                    have mentioned something, you would have read it  
7                    in Dr. German's report, for example?

8            A        It was often more a case of the documents put  
9                    out by the Canadian government, the Financial  
10                    Action Task Force mutual evaluation review,  
11                    sometimes the policy-ish documents brought out  
12                    by think tanks. And yes, you're right,  
13                    sometimes in the reports by Peter German and  
14                    Professor Schneider.

15           Q        Okay. Now, I think this is the case, and I just  
16                    wanted to confirm, when Mr. Martland was asking  
17                    you some questions about lawyers and trust  
18                    accounts, he suggested to you something about  
19                    trust accounts perhaps proving a dead end to  
20                    investigations. And you gave a more nuanced  
21                    answer, I'd say.

22                    You're not specifically aware of through  
23                    personal knowledge of any specific investigation  
24                    in British Columbia having been stymied by a  
25                    trust account, are you?



1           A     No. I hesitate because I seem to remember  
2                    something in one of the reports, but I'm afraid  
3                    I can't remember the specific case and the page  
4                    number.

5           Q     Right.

6           A     Apologies.

7           Q     No, no, not at all. But it would be something  
8                    you read as opposed to something you'd  
9                    know through personal knowledge.

10          A     Yes, that's true.

11          Q     Okay. Now, in one of your responses to  
12                    Mr. Martland in your direct testimony you  
13                    suggested that the real estate sector in BC was  
14                    lightly regulated, and I think you extended that  
15                    characterization to ancillary services in which  
16                    you included lawyers. Am I correct that when  
17                    you're referring to light regulation you are  
18                    referring to the fact that the Canadian statute,  
19                    the *Proceeds of Crime (Money Laundering) and*  
20                    *Terrorist Financing Act* doesn't directly require  
21                    reporting of -- from lawyers, for example?

22          A     I think that's part of it, but it's also that  
23                    there's no obligation, as I understand it, to  
24                    know your customer procedures as well.

25                    So I think the suspicious transaction

1 reporting is part of it, but not the whole lot.  
2 In some way not even the most important part.

3 Q And when you're saying no obligation, that's  
4 again looping back to the federal statutory  
5 regime. You're not suggesting, for example,  
6 that there's no know-your-customer obligations  
7 as a matter of law society regulation?

8 A Yeah, that's true.

9 Q Okay. Now, you referred in your testimony to a  
10 law firm in Florida that gave quite a startling  
11 response it sounded like to an inquiry that you  
12 or one of your colleagues might have made about  
13 whether they'd become involved in something that  
14 had a terrorism-related taint to it. Is -- am I  
15 right, that's part of the study that you  
16 recounted in your *Global Shell Games:  
17 Experiments in Transnational Relations, Crime  
18 and Terrorism* book from 2014?

19 A That's correct, yes.

20 Q And that's I believe -- during the break I was  
21 able to find the quote where the Florida firm  
22 said, and my apologies for some -- well,  
23 language that may suggest profanity here. Your  
24 stated purpose -- and this is in responding to  
25 an email inquiry from a supposed Pakistani

1 source.

2 "Your stated purpose could well be a front  
3 for funding terrorism and who the --"  
4 F with asterisks.

5 "... would get involved in that?"

6 And then suggesting they would for 5,000 a  
7 month. And then:

8 "Your previous message and this one are  
9 meaningless crap. Get a clue. Just how  
10 stupid do you think we are?"

11 That's the kind of -- it's ambiguous as you  
12 said, but it's perhaps suggestive that they  
13 would have been prepared to engage in something  
14 had they been paid enough.

15 A Yeah, well, in both -- that was the gist of  
16 their response, but in the rest around it they  
17 said in no uncertain terms that for \$5,000 a  
18 month as they indicated something could be done.

19 Q Got it.

20 A Even though they had accurately perceived that  
21 we are a terrorism finance risk.

22 Q Now, I've gone through, at least insofar as I  
23 could during the break, looking for references  
24 to Canada in the book. And I don't see any  
25 quotations like that that are attributed to a

1 Canadian law firm. Is that fair?

2 A Yes.

3 Q And certainly you're not aware of any law firm  
4 in BC that has said that it would welcome  
5 terrorism-related business?

6 A Not so far as I'm aware, no.

7 MS. HERBST: All right. Thank you. I'm just  
8 checking through my notes, but ...

9 Thank you, Professor Sharman. Those are my  
10 questions. Thank you.

11 THE WITNESS: Thank you.

12 THE COMMISSIONER: Thank you, Ms. Herbst.

13 I'll call now on Mr. Usher on behalf of the  
14 Society of Notaries Public of British Columbia,  
15 who has been allocated 10 minutes.

16 MR. USHER: Thank you, Mr. Commissioner.

17 **EXAMINATION BY MR. USHER:**

18 Q Firstly, thank you Dr. Sharman, for your  
19 evidence today. In section 2 of your report you  
20 discussed -- and Mr. Martland brought to your --  
21 went through this report from China called "A  
22 Study on Methods of Transferring Assets Outside  
23 of China By Chinese Corruptors and Monitoring  
24 Methods For This Problem." This is footnote 57  
25 of page 13 of your report.

1                   As you know, Dr. Sharman, on the weekend you  
2                   kindly sent me a copy of this report and I  
3                   forwarded it to the commission.

4           MR. USHER: So, Mr. Commissioner, I would -- the  
5           witness did provide me with that document, and I  
6           did provide it to the commission and I just  
7           wanted to seek leave to put the document to the  
8           witness and enter that study as an exhibit.

9           THE COMMISSION: All right. Mr. Martland, any  
10           objection to that?

11          MR. MARTLAND: No. Given the way it arose with  
12          Mr. Usher getting it from the witness as he did  
13          and the witness having been the source of it,  
14          unless he has a concern about answering  
15          questions with it, I don't see any difficulty  
16          with that. Thank you.

17          THE COMMISSIONER: All right. Thank you.

18          MR. USHER: Thank you, Mr. Commissioner. If I could  
19          ask -- the report came as a Word doc file. I  
20          provided it to commission both as that and then  
21          saved as an Acrobat portable document format, or  
22          PDF file. Perhaps if I could ask the registrar  
23          to put up the PDF format of that document for  
24          the witness to have a look at. Thank you, Madam  
25          Registrar.

1 Q And, Dr. Sharman, is this -- do you recognize  
2 this as the report that you sent to me?

3 A Yes.

4 MR. USHER: May this be marked as an exhibit, then.

5 THE COMMISSIONER: Very well that will be 961.

6 THE REGISTRAR: Exhibit 961.

7 **EXHIBIT 961: A Study on Methods of Transferring**  
8 **Assets Outside China by Chinese Corruptors and**  
9 **Monitoring Methods for this Problem - Bank of**  
10 **China - June 2008**

11 MR. USHER: Thank you.

12 Q Just some general questions on this report,  
13 Dr. Sharman. I take it it starts with a  
14 reference to -- hello?

15 MR. MARTLAND: Mr. Usher, you were Zoom-bombed. But  
16 carry on.

17 MR. USHER: Thank you. Okay.

18 Q Dr. Sharman, this report starts on the first  
19 couple pages with your news story. But if we  
20 could skip down to the actual start of the  
21 report, so a few pages in, that goes to page --  
22 well it actually is page 9 of the report it  
23 actually starts. This is the beginning of the  
24 report.

25 Dr. Sharman I just simply wanted to ask you

1           to tell us a bit about the provenance of this  
2           document. In other words, how did you come  
3           to -- I know you've referenced this, for  
4           example, in one of your books. And what's your  
5           confidence in both the document and the accuracy  
6           of the translation?

7           A     I first became aware of it through speaking to  
8           law enforcement people in Australia and the  
9           United States who let me know that and I think  
10          actually provided -- if I remember rightly,  
11          someone from the Australian Federal Police  
12          provided me with the document. I mean, as you  
13          can tell it's not actually a secret document.  
14          Well, it was originally intended to be such, but  
15          it escaped and was leaked into the public  
16          domain. But I got it via law enforcement.

17          Q     Okay. And obviously you read through it  
18          carefully and it's a lengthy report. Could you  
19          tell us what the significance of this is to your  
20          work on looking at money laundering and in  
21          particular the risks of corruption -- corrupt  
22          money coming in, and then how this -- that is  
23          of -- would be of significance to the  
24          commission's work in this area.

25          A     Sure. I mean, as I indicated, just because the

1 Chinese government says something, even in a  
2 secret report, doesn't mean it's necessarily  
3 true. But I think both given the kind of  
4 provenance of the report, the fact that it was  
5 endorsed by -- that certainly the Chinese  
6 government rather sheepishly admitted it was  
7 genuine. As you see, the translation is pretty  
8 rough and ready. It's not an official one.

9 I think together with -- I mean the value  
10 of this is it puts some figures on how big a  
11 problem the Chinese government thinks that it  
12 has, which may be too large or too small, but  
13 even if they're in the ballpark it's a huge  
14 problem.

15 And I think less than the individual cases  
16 what's useful for my research is an indication  
17 of the kind of countries where a lot of this  
18 money and a lot of the officials end up. And  
19 also the common kinds of patterns that are used  
20 to move money across borders. But I think  
21 certainly given the provenance of the report  
22 it's only prudent to rely on independent  
23 confirming sources as well. Again, just because  
24 the Chinese government says someone is corrupt  
25 it ain't necessarily so.



1                   And I think the relevance for the work of  
2                   the commission is that given that the second  
3                   priority I was told -- was asked to write about  
4                   in the report was proceeds of foreign corruption  
5                   and given that this document names Canada as the  
6                   second most common jurisdiction for hosting  
7                   corrupt -- for hosting corrupt proceeds stolen  
8                   are from China, that's why it seemed relevant to  
9                   me.

10               MR. USHER: Thank you. That's very helpful.

11                   And I don't need this document displayed any  
12                   further, thank you, Madam Registrar.

13               Q     Just with some general questions, then. In your  
14                   report you talk about money in lawyers' trust  
15                   accounts is in essence hidden or not visible to  
16                   financial institutions. I'm trying to think of  
17                   what's your understanding of how money is  
18                   deposited into and where it is sent from law  
19                   firm trust accounts. This would apply to notary  
20                   accounts because as you may or may not know,  
21                   notaries public in BC do real estate  
22                   transactions in the same way that law firms do.

23                   But, you know, where does that money come  
24                   from? And you talk about it being hidden, but  
25                   what's your sense of where does it come from and

1                   where does it go to?

2                   A     I think some of the best studies of this that  
3                   have been influential for me that have been  
4                   those by -- first off indictments by the US  
5                   Department of Justice to deal with the  
6                   anti-kleptocracy task force that I mentioned,  
7                   and secondly the reports by the US Senate  
8                   permanent subcommittee on investigations, the  
9                   2010 one. And those reports kind of obviously  
10                  deal with United States, but not just the United  
11                  States. Some of those indictments have to do  
12                  with law firms in other countries, including  
13                  Britain.

14                  And so for the detailed knowledge of  
15                  particular cases like Teodoro and Obiang of  
16                  Equatorial Guinea, there's a very kind of  
17                  detailed coverage in those reports which maybe  
18                  go to a couple hundreds of pages about really  
19                  the transaction number of which bank, which  
20                  account, which shell company it went into, which  
21                  lawyer's trust account and then how that was  
22                  used to buy real estate, for example, in Malibu,  
23                  California, but also in London, not so far away  
24                  from where I live.

25                  Q     If I suggested to you that all deposits and

1                    withdrawals into lawyer and notary public trust  
2                    accounts in BC are done by bank instruments such  
3                    as cheques, bank drafts, electronic transfers  
4                    that have been done by domestic international  
5                    systems, so all money comes in in one of those  
6                    forms, all money leaves in one of those forms?

7                    A     Sure. Yeah.

8                    Q     And the banks in fact keep copies and record of  
9                    all of those documents?

10                  A     That's not really terribly helpful because  
11                  foreign wire transfers often include incomplete  
12                  information that doesn't identify the sender or  
13                  the sender may be identified as a corporate  
14                  vehicle where the beneficial owner is not known.  
15                  So I agree you're going to have an electronic  
16                  trail there from the bank, but it's going to  
17                  leave out the elements that you really need as  
18                  an investigator or at least it could  
19                  potentially, I should say, and that's where the  
20                  risk arising.

21                  Q     Right. And so in your work obviously you've  
22                  raised an important point. Have you looked at  
23                  one of the tools for all of this as the  
24                  improvement of the record keeping and the  
25                  records that go with international transfers? I

1 know the SWIFT has been working on what's called  
2 20022. I don't know if -- are you familiar with  
3 that?

4 A I think the -- one of the -- it's the same  
5 problem writ large. SWIFT has standards about  
6 what should happen. People should not send  
7 incomplete wire transfers that do not properly  
8 identify the sender. Unfortunately people  
9 routinely send wire transfers that do not  
10 identify the sender and the money nevertheless  
11 gets through. So certainly I'm aware that SWIFT  
12 and others are working on the problem and have  
13 passed rules that say full information should be  
14 included. But just because you pass a rule  
15 doesn't mean that people behave in accord with  
16 that rule.

17 Q Yeah. So the good ideas don't necessarily  
18 translate into actual action.

19 A Exactly.

20 Q Thank you. In your report you recommend the  
21 broader use of tax enforcement. In your  
22 research have you found any jurisdiction that  
23 requires direct reporting to income tax  
24 authorities of the acquisition and disposition  
25 of real estate and perhaps it even requires that

1 reporting as a prerequisite for the registration  
2 of a land transaction?

3 A I think sometimes in some tax authorities that  
4 it's particularly acquisition of foreign  
5 property that can have a specific reporting  
6 instance as well. Just like hosting -- just  
7 like opening a foreign bank account, it can be  
8 mandatory to report that on an income tax  
9 declaration for some countries. So that was  
10 more the aspect that I was looking at in terms  
11 of foreign owners of property in Canada or  
12 whatever jurisdiction you might be talking  
13 about.

14 Q Thank you. Just one last question. I see my  
15 time is running here. In your research in  
16 setting up companies did you attempt to set up a  
17 BC company using the online registration systems  
18 provided by our provincial government?

19 A Not yet, but that might be the next one.

20 MR. USHER: Well, good luck with that.

21 THE WITNESS: Thank you.

22 MR. USHER: And feel free to make any one of us a  
23 director.

24 THE WITNESS: Thank you.

25 MR. USHER: Thanks, Dr. Sharman. That's all my

1 questions.

2 THE COMMISSIONER: Thank you, Mr. Usher.

3 I'll now call on Mr. Duong on behalf of the  
4 BC Lottery Corporation, who has been allocated  
5 five minutes.

6 MR. DUONG: Thank you, Mr. Commissioner. I should  
7 fess up that that was me who did the  
8 Zoom-bombing. My apologies, Professor Sharman.

9 I have no questions for the witness.

10 THE COMMISSIONER: Thank you, Mr. Duong. And we did  
11 see your name, so your identity was not hidden.

12 MR. MARTLAND: Transparency, Mr. Commissioner.

13 That's part of the transparency regime here.

14 THE COMMISSIONER: It is indeed. Thank you. All  
15 right. Thank you.

16 Ms. Tweedie on behalf of the British  
17 Columbia Civil Liberties Association, who has  
18 been allocated so minutes.

19 MS. TWEEDIE: Thank you, Mr. Commissioner.

20 **EXAMINATION BY MS. TWEEDIE:**

21 Q Professor Sharman, can you hear me?

22 A Yes.

23 Q Great. Thank you. I just have some general  
24 questions arising out of your report. I don't  
25 believe we need to bring it up, but if you would

1                   like to at any point, please let me know.

2                   I'd first like to turn to what you  
3                   described as the central paradox of AML policy,  
4                   and that Canada suffers from this in that it  
5                   has -- the law has provided an escalating  
6                   succession of powerful tools for surveillance,  
7                   prosecution and asset forfeiture and yet the  
8                   actual effectiveness of these laws seems to  
9                   remain very low.

10                  I take it you would also agree that these  
11                  powerful tools that you reference, such as  
12                  surveillance and asset forfeiture, can also lead  
13                  to societal harm, such as the erosion of privacy  
14                  rights and impacts on innocent third parties?

15                  A    Yes, definitely. And of course even more so in  
16                  authoritarian regimes than democratic.

17                  Q    Yes, of course. And these tools often affect  
18                  the many and not just the few and certainly not  
19                  just criminals; is that correct?

20                  A    It depends which ones you're talking about. So  
21                  surveillance affects a large number of people.  
22                  I think only a very small number of people are  
23                  subject to confiscation on money laundering  
24                  grounds, whether justified or not.

25                  Q    Okay. But in terms of measures, then, such as

1 surveillance, data and information sharing, it's  
2 going to affect many people. You'd agree with  
3 that?

4 A Yes. I mean, in some sense anyone with a bank  
5 account.

6 Q Okay. Great. Thank you. So in light of that,  
7 I take it you would agree that any analysis and  
8 consideration of what anti-money laundering  
9 measures should be implemented have to of course  
10 take into account these social costs and the  
11 impact of these measures on community?

12 A I think they should take those into account.  
13 Unfortunately I think they rarely do.

14 Q Okay. And speaking of social cost. Just  
15 turning briefly back to civil forfeiture. You  
16 wrote in your report that there are many stories  
17 of accidental or deliberate misuse of  
18 confiscation powers. My friend  
19 Ms. Addario-Berry asked you whether you were  
20 aware of any of these in the Canadian context,  
21 and you said no. Just to clarify. I assume you  
22 didn't undertake any extensive research about  
23 civil forfeiture in the Canadian context and how  
24 it might affect innocent third parties?

25 A That's correct.



1           Q     Okay. Thank you. And in writing about UWOs,  
2                    which is another issue that you spoke about  
3                    today, you wrote that they may be  
4                    unconstitutional in certain jurisdictions,  
5                    including Canada. And just to be clear, you did  
6                    not engage in any sort of constitutional  
7                    analysis in this regard, did you?

8           A     No. That remark was based on a Canadian  
9                    delegate speaking at a Financial Action Task  
10                   Force conference. But no, I did not.

11          Q     Thank you. And similarly I assume you did not  
12                    engage in any constitutional analysis of using  
13                    the tax system and the CRA in Canada to combat  
14                    money laundering?

15          A     That's correct. But I think I probably flagged  
16                    it up there that things that may be possible --  
17                    that are possible in Australia may not be  
18                    possible in Canada for those kind of reasons.

19          Q     Okay. Thank you. I just have a question about  
20                    a statement in your report. You write at page 7  
21                    that Canada's compliance with international  
22                    beneficial ownership -- sorry, international  
23                    beneficial ownership is conspicuously bad, but  
24                    it has avoided AML and tax blacklists maintained  
25                    by FATF, OECD and G20.

1                                   You write that:

2                                   "Canada has benefited from the prominent  
3                                   double-standard whereby these exclusive  
4                                   international clubs go easy on their  
5                                   members' failings, while reserving stigma  
6                                   and sanctions for smaller, poorer  
7                                   non-member states."

8                                   Can you please tell us more about this prominent  
9                                   double-standard.

10                   A    Sure. It's a long, sad story but I'll just give  
11                                   you the short version in that clubs like the EU  
12                                   and the Financial Action Task Force, either at  
13                                   various points in the EU currently, explicitly  
14                                   apply higher standards to non-members than they  
15                                   do to their own members. One example that's  
16                                   already come up is the abolition of bearer  
17                                   shares. That countries like the Bahamas were  
18                                   blacklisted almost 20 years ago for allowing  
19                                   bearer shares and for not having a beneficial  
20                                   ownership way of identifying it even though at  
21                                   the time many jurisdictions, including Canada,  
22                                   including the United States, either allowed  
23                                   bearer shares or had systems that failed to  
24                                   identify the beneficial owner. As I say,  
25                                   there's a much longer answer than that, but I

1 know that it's not the time.

2 Q Okay. Thank you. And just turning to -- on  
3 page 12 of your report -- and I appreciate that  
4 Mr. Martland already took you to this paragraph  
5 regarding legalization -- and you write that the  
6 only guaranteed way to reduce money laundering  
7 is to legalize formerly criminal behaviour.  
8 And you gave some evidence in that regard.

9 In addition to also being the only  
10 guaranteed way to reduce money laundering, I  
11 take it you would agree that legalizing formerly  
12 criminal behaviour can also lead to great  
13 societal benefits, for instance increasing  
14 protections for sex workers and reducing debts  
15 from a poisoned drug supply?

16 A That's probably outside my area of expertise. I  
17 could see it having social goods or social bads  
18 and I just really have no idea about the net  
19 effect. I think in some areas it could be  
20 positive, in areas it could be very negative.

21 MS. TWEEDIE: Okay. Thank you. Those are all my  
22 questions, Professor Sharman.

23 THE WITNESS: Thank you.

24 THE COMMISSIONER: Thank you, Ms. Tweedie.

25 I'll call now on Mr. Rauch-Davis for

1                   Transparency International Coalition, who has  
2                   been allocated 15 minutes.

3                   MR. RAUCH-DAVIS: Thank you.

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

5                   Q     Dr. Sharman can you hear me okay?

6                   A     Yes, thank you.

7                   Q     So in response to some questions by Ms. Tweedie  
8                   on the international clubs, I take it that your  
9                   evidence overall is that bodies like the FATF  
10                  and other types of international clubs are too  
11                  lenient on more progressive western countries,  
12                  if I can put it that way?

13                  A     They're more lenient on members and they're  
14                  tougher on non-members.

15                  Q     Yeah. And perhaps that's the result of some  
16                  bias?

17                  A     Yes, definitely.

18                  Q     Yeah. So is it your -- is the natural  
19                  inference -- or is it your evidence that if they  
20                  were more objective, those international critics  
21                  would likely be more critical of countries like  
22                  Canada in terms of their beneficial ownership  
23                  regulations?

24                  A     Yes.

25                  Q     Yeah. Moving topics a bit. So your report

1           comments on the difficulty of ascertaining how  
2           much money is laundered across the world and  
3           also the difficulty in investigating money  
4           laundering offences through economies, including  
5           Canada. I circulated a document that's cited in  
6           your reported. It's the "Why We Fail to Catch  
7           Launderers 99 Percent of the Time."

8           MR. RAUCH-DAVIS: Madam Registrar, do you have access  
9           to that document?

10                   And, Mr. Commissioner, I did circulate this  
11           outside of the five-day window, so I do have to  
12           seek leave to put this to the witness. It is  
13           referenced in his report at three separate  
14           footnotes.

15           Q     But perhaps -- Dr. Sharman, are you familiar  
16           with this document?

17           A     Yes, I am.

18           THE COMMISSIONER: All right. Well, is there any  
19           objection from any source to this document being  
20           put to Dr. Sharman? No. All right.

21                   Hearing none, Mr. Rauch-Davis, go ahead.  
22           And I see Dr. Sharman doesn't seem perturbed by  
23           the notion.

24           MR. RAUCH-DAVIS: Thank you. Madam Registrar, if we  
25           could just scroll down on the first page.



1 sentence where it sets out two of the key  
2 recommendations from another CD Howe article.  
3 Publicly accessible registry of beneficial  
4 ownership. And the second one is mandatory  
5 declarations of beneficial ownership with  
6 meaningful sanctions for false declarations.  
7 And that carries onto the next page.

8 And you've given some evidence on the  
9 publicly accessible registry, and I'll come back  
10 to that.

11 MR. RAUCH-DAVIS: But I wonder, Madam Registrar, if  
12 we can go to page 5 and 6 where the second  
13 recommendation is kind of discussed.

14 Q At the bottom there's the point form there. And  
15 these are the recommendations for the beneficial  
16 ownership declaration. So first -- the first  
17 bullet point there is:

18 "- All reporting entities should have to  
19 request beneficial ownership  
20 information from their customers."

21 Then onto the next page is:

22 "- Customers who provide beneficial  
23 ownership information to reporting  
24 entities should have to do so by  
25 declaration.

1                   -     Beneficial ownership filed on a  
2                             registry should also have to be made  
3                             by declaration."

4                   And:

5                             "-   False declarations should be subject  
6                             to sanctions."

7                   And then also the use of unexplained wealth  
8                   orders.

9                             And I -- this is a long question, but I'm  
10                            wondering if you could comment on whether you  
11                            think this would be effective, these types of  
12                            measures.

13           A     It's better than the system now, but I think  
14                   it's not the best system and that it won't work  
15                   as well as proponents say it will.  So I  
16                   think -- I mean, I don't want to make the  
17                   perfect the enemy of the good.  It would be an  
18                   improvement on the current system.  I think much  
19                   less of an improvement than the author suggests.  
20                   And I think that there are -- again, I'm more a  
21                   fan of licensed and regulated intermediaries as  
22                   a better way than public registries, although I  
23                   do see advantages in public registries, not  
24                   least accessibility to organizations like TI.

25                   MR. RAUCH-DAVIS:  Right.  I wonder, Mr. Commissioner,



1 if we could have this marked as an exhibit.

2 THE COMMISSIONER: Yes, that will be the next  
3 exhibit.

4 THE REGISTRAR: Exhibit 962.

5 **EXHIBIT 962: Why We Fail to Catch Money**  
6 **Launderers 99.9 Percent of the Time, by Kevin**  
7 **Comeau - May 7, 2019**

8 MR. RAUCH-DAVIS: And, Madam Registrar, if we could  
9 bring up Dr. Sharman's report and go to page 10,  
10 please. So I'll pick up on the public  
11 beneficial ownership registry.

12 Thank you, Madam Registrar, that's perfect.  
13 If you just scroll up a little bit.

14 Q There's a paragraph beginning "the main  
15 advantage of a public open registry." Yes. So  
16 this is the main advantage as you may have just  
17 identified, but it's essentially that it will  
18 assist journalists, whistle-blowers and the  
19 public in combatting money laundering -- on  
20 money laundering activities. And I see you  
21 nodding your head.

22 A Yes.

23 Q Yeah. And referenced throughout your report is  
24 the fact that most large money laundering and  
25 corruption cases are actually not first detected

1                   by STRs or law enforcement, more typically  
2                   thanks to journalist whistle-blowers and NGOs;  
3                   right?

4           A     Yes.

5           Q     And that includes things like the Panama paper  
6                   and Mossack Fonseca scandal as well as even that  
7                   Vancouver Model, which was first reported on by  
8                   the media?

9           A     Yes, I think that's an excellent example.

10          Q     And so that's where you identify the main  
11                 advantage of a public registry so that it  
12                 enables these people to assist.

13                         In the same vein, I'm wondering would you  
14                         also agree that since there's the transnational  
15                         and international element of money laundering,  
16                         that a public registry also has the benefit of  
17                         enabling foreign citizens and whistle-blowers to  
18                         require on the predicate offence -- I mean  
19                         they're -- by that question I mean they're  
20                         closer to the predicate offence. For example,  
21                         in a corruption case a person in Canada might  
22                         not have as good of information on what a  
23                         minister owns as a person in the foreign  
24                         country. So if they're able to search a public  
25                         registry, they would be able to blow the whistle

1 on that type of sentiment.

2 A Yeah, it would make things easier for  
3 transnational investigations by private citizens  
4 and civil society groups. I'd agree with that.

5 Q And so then the next two paragraphs you talk  
6 about the -- what you identify as the  
7 disadvantages of the public registry. And I see  
8 two disadvantages that are somewhat  
9 interconnected. First is that there's little  
10 evidence that they help in deterring, detecting  
11 or combatting money laundering and that's in the  
12 first paragraph there.

13 And I note the last sentence of that  
14 paragraph states:

15 "Even the British government admits that  
16 the UK remains a centre for international  
17 money laundering. British corporate  
18 vehicles are still prominent in these  
19 cases."

20 And you use examples of the Russian and  
21 Azerbaijani laundromats; right?

22 A Yes.

23 Q And so you know that the UK persons with  
24 significant control registry, that was  
25 implemented in 2016; right?

1           A     Yes.

2           Q     Yeah.  And so I noted the footnote 47, which is  
3                   the footnote for that last sentence we just  
4                   reviewed, there are two articles, not the House  
5                   of Commons UK 18, but the two articles following  
6                   that are OCCRP article.  And I noted when I read  
7                   those articles that the activities in both of  
8                   those reports were from 2011 to 2014.  That's  
9                   the Russian laundromat.  And then Azerbaijani  
10                  laundromat was 2012 to 2014.  Are you aware of  
11                  that?

12          A     Yeah, I mean, the Azerbaijani laundromat has  
13                  continued and continued to be reported on.  And  
14                  the Russian laundromat has been rebranded  
15                  slightly as the Troika one.  Both still feature  
16                  UK corporate vehicles.

17          Q     Right.  And I think that's referenced in the  
18                  2018 report.  I just wanted to clarify that  
19                  those two links there don't really support the  
20                  contention that the UK registry is ineffective  
21                  because they're referencing activities that took  
22                  place prior to the implementation of the UK  
23                  registry?

24          A     Certainly those dates -- yeah, I mean, 2012 is  
25                  earlier than 2016.  No argument with you there.

1                   But I think for both cases and including the  
2                   reporting on both cases, including by the OCCRP,  
3                   that they're continuing, particularly in the  
4                   Russian case, and they do go beyond the date  
5                   that the persons with significant control was  
6                   introduced. And, again, part of that is in the  
7                   2018 report as well by the parliament.

8           Q       Right. In the 2018 report there is a reference  
9                   to that discontinuation of the activity, but I  
10                  also saw that there's a reference that the UK --  
11                  let me rephrase my question.

12                         The UK PSC registry, you know that it was  
13                         set up for UK companies and it does not apply or  
14                         did not apply to owners of overseas companies  
15                         operating or purchasing property in the UK;  
16                         right?

17           A       Yes.

18           Q       And so that was an identified gap in the UK  
19                   implementation of the PSC registry. And aren't  
20                   they now taking -- isn't the UK now taking steps  
21                   to assess that issue?

22           A       Well, not really. I mean, the UK gets to decide  
23                   the rules for its own companies. It doesn't get  
24                   to decide the rules for other countries'  
25                   companies.

1                   The UK can say that any company holding a  
2                   bank account or owning property in Britain may  
3                   have to disclose the beneficial owner, but  
4                   obviously the laws that govern Canadian laws,  
5                   Canadian companies are very properly set in  
6                   Canada. The situation does blur a bit for the  
7                   UK overseas territories. The Cayman Islands,  
8                   the BVI and the Crown dependencies.

9                   But yeah, certainly of course the UK  
10                  registry only deals with UK companies because  
11                  they're the only kind that the UK government has  
12                  the power to regulate. Again, with a partial  
13                  exception of foreign companies that either own  
14                  property in the UK or engage in economic  
15                  activity in the UK.

16                Q     Right. And then in the interests of time I have  
17                  to move on a little bit. But at page 17 of the  
18                  report -- and I won't take you there -- you  
19                  mentioned the abuse to Scottish limited  
20                  partnerships, SLPs, and how they were originally  
21                  excluded from the UK PSC registry. But then you  
22                  know that in 2017 they were brought under the  
23                  scope of the registry; right?

24                A     Yeah. And I think -- I mean, it's probably the  
25                  single best piece of evidence in favour of the

1           effectiveness is the incredible slump in the use  
2           of Scottish limited partnerships. And I think I  
3           referred to that, that the use of them kind of  
4           collapsed after they were included in the  
5           registry, which gives some idea of how important  
6           secrecy was for those that would be using them.

7           Q     Okay. I didn't see it in your report, but I  
8           could be wrong. But in the interest of time, I  
9           take it your evidence is that the inclusion of  
10          the SLPs in the UK registry is the best evidence  
11          that the UK registry is having an effect because  
12          there was a slump in incorporations?

13          A     Because when they were secret, they were very  
14          popular. When they became open, they became  
15          rapidly very unpopular, which to me suggests  
16          that the main attraction was secrecy and that  
17          putting them on the registry made them much less  
18          secretive and much less attractive to people who  
19          were, for good reasons or for bad reasons,  
20          interested in secrecy.

21                         So if I was looking for one piece of  
22          evidence that supports the effectiveness in the  
23          UK of the PSC, I would talk about trends in  
24          incorporations of Scottish limited partnerships.

25          Q     Right. Because there appears to have been a

1                   deterrent. Once it became --

2           A       Yes.

3           Q       -- public, the rate at which they were  
4                   incorporated dropped dramatically.

5           A       Yes, exactly.

6           Q       Yeah, I have a note from a Global Witness report  
7                   that they dropped to the lowest in seven years  
8                   once they became public. Do you know anything  
9                   about that?

10          A       Yeah, I mean, I think they dropped by about  
11                   80 percent. They'd had this meteoric rise and  
12                   then an equally meteoric fall. What's not  
13                   reported is then they went on to Northern  
14                   Ireland limited partnerships and did the same  
15                   there, but that loophole hasn't been closed. So  
16                   now Northern Ireland limited partnerships are  
17                   the thing, not Scottish limited partnerships  
18                   anymore.

19          Q       Right. There was a corresponding increase in  
20                   Northern Ireland corporations being incorporated  
21                   to the Scottish limited partnerships  
22                   disappearing?

23          A       Yeah. I mean, so that's one of the relatively  
24                   rare examples of the whack a mole and the  
25                   necessity for money launderers to be responsive.



1 Q Okay. And moving on to the second of the two --  
2 where you identify as disadvantages of a public  
3 registry is that there's the potential for large  
4 volume of low quality information. And so you  
5 know that the UK has had issues with validation  
6 and verification of the information going into  
7 it PSC registry; right?

8 A Yes.

9 Q And that's the example you use there. So I take  
10 it you'd agree that if the data quality is  
11 better, the registry will be more effective?

12 A Yes. That's a big if, but I agree. Given the  
13 first part of the statement, the second part  
14 follows.

15 Q Right. And Global Witness is also recommended  
16 that UK should resource Companies House to  
17 verify the submitted beneficial ownership  
18 information and then also sanction  
19 non-compliance. Because you take issue with the  
20 enforcement as well, right, of the information  
21 going in?

22 A Sure. I mean, it's one thing saying there  
23 should be more money and people should be  
24 enforced, but that's a lot more easy to say than  
25 to do. You've got over 3 million companies and

1           four people at Company House who are responsible  
2           for that information. They've got almost a  
3           million companies to deal with each. So good  
4           luck on verifying that.

5           Q     Right. Doesn't that just speak to resources,  
6           though? Like, if -- in a perfect world if we  
7           could verify all the information coming in, it  
8           would be of high utility; right?

9           A     Yeah, I mean, if the government hired 10,000  
10          more people to work in Companies House, but I'm  
11          not putting money on that outcome.

12          MR. RAUCH-DAVIS: Mr. Commissioner, I'm nearing the  
13          end of my allotted time. I wonder if I might  
14          indulge five more minutes. I don't anticipate  
15          being too long, but I do have a few more topics  
16          to go through.

17          THE COMMISSIONER: Yes. All right, Mr. Rauch-Davis.  
18          Five more minutes.

19          MR. RAUCH-DAVIS: Thank you.

20          Q     So I take it your criticism of the lack of  
21          enforcement on information, that relates more or  
22          less to one of the themes in your report that  
23          there are enforcement concerns on money  
24          laundering offences at large and that there  
25          doesn't seem like there are many successful

1                   prosecutions and enforcements; is that right?

2           A        Yes. I mean, I think there's just a lack of  
3                   enforcement and implementation the whole way  
4                   through the system. Part of that is the lack of  
5                   prosecutions and convictions, but that's not all  
6                   of it. It's more the fact that laws are passed  
7                   or regulations are passed, and then they stay on  
8                   the books and don't really do anything.

9           Q        And, I mean, would you agree that -- and I think  
10                   this might be referenced in your report as well  
11                   that police either don't have enough resources,  
12                   aren't experienced enough or don't want to look  
13                   at these types of offences and crimes?

14          A        Yes, that's common.

15          Q        So doesn't that just emphasize the need for a  
16                   public registry and the benefit we just covered,  
17                   and that allows some of the burden to be shared  
18                   with journalists, whistle-blowers and NGOs who  
19                   can then assist?

20          A        I mean, yeah, as I said in the report, I think  
21                   the main benefit of the public registry is  
22                   exactly because it helps the parties that you  
23                   specify. And, you know, I'm a great fan of  
24                   Transparency International France taking Obiang  
25                   to court and all the rest, but there is this

1 kind of naive presumption that more data are  
2 better. I mean, I like email, but I don't want  
3 10 times more email or a hundred times more than  
4 I get.

5 If you're getting 3 million unverified  
6 declarations of ownership and saying well,  
7 someone really should verify these. Maybe.  
8 But, I mean, what are the chances of that  
9 happening in any plausible public policy world?  
10 I'm not sure that, you know, a large volume of  
11 low quality information is the best route,  
12 particularly as it's not the only route to  
13 solving beneficial ownership.

14 And, again, given that the results are so  
15 modest, perhaps in fairness because the system's  
16 new, again, the kind of evangelical take that  
17 the UK government has that everyone should have  
18 one of these, the question is well, how do you  
19 know? It hasn't really worked so well in  
20 Britain. Why should other people get rid of  
21 other systems that work better, like regulated  
22 intermediaries?

23 Q Okay. But I take it you agree that the UK  
24 registry is in its infancy, so in some sense  
25 it's a bit of a test case; right?

1           A     Yeah. I mean, if it's a test case, the thing is  
2                   to be modest about it and say, we don't know  
3                   whether this is going to work; it could be a  
4                   complete flop. That's not the attitude of the  
5                   British government, which has said, this is  
6                   wonderful; everyone should have one, including  
7                   those that do a better job than us on beneficial  
8                   ownership, and that this should be an  
9                   international standard before we have hard  
10                  evidence that it actually does what we hope it  
11                  does.

12                         I mean, again, if something is in its  
13                         infancy and is not sure, then there's an  
14                         appropriate modesty that should be attached to  
15                         that policy recommendation.

16           Q     Right. But I take it you agree that other  
17                   jurisdictions who are considering implementing a  
18                   public beneficial ownership registry, they can  
19                   apply a lessons-learned approach, and that  
20                   applies to both the criticisms in your report,  
21                   including verification of data as well as -- I  
22                   guess that criticism mostly; right?

23           A     Well, I mean, unfortunately I think not. I  
24                   mean, it's just if you have a vast amount of  
25                   information to verify and an understaffed

1 registry -- I mean, Britain is comparatively a  
2 rich country. International anti-money  
3 laundering standards have the tendency of going  
4 global. If it hasn't worked in Britain -- and  
5 most places are poorer than Britain -- why would  
6 it work better in most other places?

7 Q And so your preference remains that the CSPs  
8 collect the beneficial ownership information?

9 A I think that's the better. Yeah, I mean, I  
10 support the conclusion of the World Bank  
11 10 years ago. But again, I think there are  
12 important advantages, good things to public  
13 registries. I think public registries are  
14 certainly better than nothing. I don't think  
15 they're as good as licensed and regulated  
16 corporate service providers.

17 Q All right. And you did cite that 2011 report  
18 from the World Bank, and again, that was prior  
19 to the implementation of the UK PSC or any  
20 public registry; right?

21 A Yeah, but it was when they were actually arguing  
22 for it and it was when the United States was  
23 thinking of implementing a very similar. And  
24 the people who are least keen on registries,  
25 verifying information are the people who work in

1 registries who say, forget it; we don't have the  
2 people; we don't have the money; we can't do  
3 this.

4 Q And I think you mentioned this in your  
5 examination -- this is my last question. But  
6 you would agree that you could hypothetically do  
7 both as well. There could be room to have both  
8 a public registry and the CSP collection as you  
9 have identified?

10 A Yes. I mean, not just hypothetically. I think  
11 in fact the places like Jersey and Guernsey do  
12 have both, increased in the UK overseas  
13 territory, so it's not just a hypothetical.  
14 Some places do, and I think more will have both  
15 in the future.

16 MR. RAUCH-DAVIS: Thank you, Professor Sharman.

17 Those are all my questions. Thank you for your  
18 time.

19 THE WITNESS: Thanks.

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

21 Now Mr. Butcher on behalf of Brad Desmarais,  
22 who has been allocated 15 minutes.

23 MR. BUTCHER: Madam Registrar, you have up Professor  
24 Sharman' report already. Can we go to page 3,  
25 please.

1                   **EXAMINATION BY MR. BUTCHER:**

2                   Q     I want to ask you -- I just -- top of page 3,  
3                             please. Thank you.

4                             I want to ask you a few questions about  
5                             what you describe as underground banking. These  
6                             informal value transfer systems have ancient  
7                             origins. I see you're nodding your head.

8                   A     Yes. Sorry. Yes.

9                   Q     And are particularly prominent in south Asia,  
10                            China and east Asia?

11                  A     Yes.

12                  Q     And some of them are known as hawala in south  
13                            Asia and *fei-chien*, or flying money, in China?

14                  A     Yes.

15                  Q     And they're very culturally accepted in those  
16                            parts of the world?

17                  A     Yes.

18                  Q     And they still play a legitimate role in the  
19                            transfer of legitimate moneys from country to  
20                            country?

21                  A     Yes.

22                  Q     Particularly so in those places in the world  
23                            where there is a large south Asian and Chinese  
24                            diaspora?

25                  A     Yes.



1           Q     It's impossible to quantify the amounts of money  
2                   that are moved from country to country through  
3                   these informal value transfer systems?

4           A     Yes.

5           Q     But they can involve small and large transfers  
6                   of funds?

7           A     Yes.

8           Q     And you make the point in your report at the top  
9                   of page 3 that legitimate funds transferred  
10                  through underground banking systems ultimately  
11                  have to be introduced in the recipient country  
12                  into their formal banking systems.

13          A     Not necessarily. If they're small accounts,  
14                  they can be spent on consumption. If you're  
15                  getting a few hundred dollars from a relative or  
16                  maybe a few thousands, it could just be spent.  
17                  So to that extent there would not be a  
18                  requirement to introduce it into the formal  
19                  banking system.

20          Q     Fair enough. But if it's a larger quantity, it  
21                  usually has to be introduced into the formal  
22                  banking system?

23          A     Yeah, clearly unless people want to hold it in  
24                  cash. And indeed some people may want to do  
25                  that, that yes, it would have to be introduced

1                   into the formal banking system.

2           Q       And it's very difficult to distinguish between  
3                   legitimate and illegitimately sourced funds that  
4                   have moved through the underground banking  
5                   system?

6           A       Yes, that's true.

7           Q       Will you agree with this final question: that  
8                   it's likely that some funds that are transferred  
9                   from China, maybe even large amounts of money  
10                  transferred through the underground banking  
11                  system, do have a legitimate source?

12          A       I would expect the majority of it has a  
13                  legitimate source.

14          Q       But, again, very difficult to quantify?

15          A       Yes.

16          MR. BUTCHER: Thank you very much, Professor Sharman.

17                  Those are my questions.

18          THE WITNESS: Thank you.

19          THE COMMISSIONER: Thank you, Ms. Butcher.

20                  Anything arising Mr. Rauch-Davis?

21          MR. RAUCH-DAVIS: No, thank you.

22          THE COMMISSIONER: Ms. Tweedie?

23          MS. TWEEDIE: Nothing arising. Thank you.

24          THE COMMISSIONER: Mr. Usher?

25          MR. USHER: Nothing arising, Mr. Commissioner.

1 THE COMMISSIONER: Ms. Herbst?

2 MS. HERBST: Nothing arising. Thank you.

3 THE COMMISSIONER: Ms. Gardner?

4 MS. GARDNER: Nothing arising. Thank you,  
5 Mr. Commissioner.

6 THE COMMISSIONER: Ms. Addario-Berry?

7 MS. ADDARIO-BERRY: No, thank you, Mr. Commissioner.

8 THE COMMISSIONER: Mr. Martland?

9 MR. MARTLAND: No, thank you.

10 THE COMMISSIONER: Thank you very much for taking the  
11 time to share your expertise and insights with  
12 us, Dr. Sharman. It has been very helpful to  
13 the commission to have the benefit of your  
14 thoughtful observations and will help us in  
15 coming to grips with the issues that we're  
16 facing. Your excused now. And I know we've  
17 taken you through your dinner hour. I apologize  
18 for that. But once again, certainly grateful  
19 for your participation.

20 THE WITNESS: Thank you. And thank you for making an  
21 earlier start on my behalf. Much appreciated.

22 THE COMMISSIONER: Not at all.

23 **(WITNESS EXCUSED)**

24 THE COMMISSIONER: Mr. Martland we will adjourn until  
25 tomorrow for an even slightly earlier start, I

1                   gather, at 7:00 a.m.

2                   MR. MARTLAND: 7:00 a.m. Yes. Thank you.

3                   THE COMMISSIONER: All right. Thank you.

4                   THE REGISTRAR: The hearing is now adjourned until  
5                   May 7th, 2021, at 7:00 a.m. Thank you.

6                   **(PROCEEDINGS ADJOURNED AT 12:12 P.M. TO MAY 7, 2021)**

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