

**PROCEEDINGS AT HEARING
OF
NOVEMBER 27, 2020**

COMMISSIONER AUSTIN F. CULLEN

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November 27, 2020
(Via Videoconference)

(PROCEEDINGS COMMENCED AT 9:29 A.M.)

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

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. Martland. Does Mr. Isaac have conduct of the panel?

MR. MARTLAND: Mr. Commissioner, yes, he does. Thank you.

THE COMMISSIONER: Thank you. Yes, Mr. Isaac.

MR. ISAAC: Thank you. The next two witnesses, Mr. Commissioner, will be called together as a panel, are Michael Barron and Timothy Law.

Madam Registrar, if you would please affirm Mr. Barron and swear in Mr. Law, please.

THE REGISTRAR: Witnesses, can you please unmute yourselves. Would each of you please state your full name and spell your first name and last name for the record. I'll start with Mr. Barron.

THE WITNESS: (MB) Michael Anthony Barron.
M-i-c-h-a-e-l B-a-r-r-o-n.

THE REGISTRAR: Thank you. And Mr. Law.

THE WITNESS: (TL) Timothy William Law.

1 T-i-m-o-t-h-y L-a-w.

2 THE REGISTRAR: Thank you.

3 MICHAEL BARRON, a
4 witness called for the
5 commission, affirmed.

6 TIMOTHY LAW, a witness
7 called for the
8 commission, sworn.

9 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
10 Mr. Isaac.

11 MR. MARTLAND: I apologize, Mr. Commissioner. It
12 just occurred to me that I should do this. I
13 should attribute it. I actually was passed a
14 note virtually to do so. There's an item of
15 business I was hoping to address just at the
16 outset that relates to a ruling that was
17 released yesterday and the marking of an
18 exhibit and so in the ruling number 18 which is
19 on the commission's website, as a result of that
20 ruling I think it makes sense before we trammel
21 ahead and mark other exhibits that we deal with
22 the marking of an exhibit because of
23 paragraph 62 of that ruling. So Madam Registrar
24 may be in a position to assist with this, but I
25 believe based on that ruling the transcript

1 involving Mr. Heed and Mr. Pinnock from July 10,
2 2018, is marked as exhibit 163. The transcript
3 dating to September 7th of 2018 is exhibit 164.
4 And what is proposed and results from the ruling
5 is that the December 31, 2018 transcript will be
6 marked as exhibit 269 and I ought to have
7 addressed that at the outset, and I apologize
8 for interrupting the start of the panel, but I
9 thought that it made sense we address that at
10 this point, please.

11 THE COMMISSIONER: Yes, thank you, Mr. Martland. I
12 will direct that those exhibits be marked in
13 accordance with the ruling number 18.

14 THE REGISTRAR: Yes. Thank you.

15 **EXHIBIT 163: Transcript of Kash Heed and Fred**
16 **Pinnock dated July 10, 2018**

17 **EXHIBIT 164: Transcript of Kash Heed and Fred**
18 **Pinnock dated September 7, 2018**

19 **EXHIBIT 269: Transcript of phone call between**
20 **Heed and Pinnock on December 31, 2018 (redacted)**
21 **(Previously Exhibit F for ID - marked as Exhibit**
22 **proper on November 27)**

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

24 MR. ISAAC: Thank you.

25 **EXAMINATION BY MR. ISAAC:**

1 Q Mr. Law and Mr. Barron, I would like to begin,
2 by briefly reviewing your experience and
3 education in relation to beneficial ownership
4 issues.

5 Madam Registrar, if we could bring up the
6 documents please at tab 1 and tab 2.

7 Mr. Barron, if you could confirm that that
8 is a copy of your CV?

9 A (MB) It is, yes.

10 Q And similarly, Mr. Law, if you could firm that
11 the other document is a copy of your CV?

12 A (TL) It certainly is, yes.

13 MR. ISAAC: We don't need to display those if we
14 could I'd ask that be marked as the next
15 exhibits, please.

16 THE COMMISSIONER: Mr. Barron's will be 170 and
17 Mr. Law's will be 171.

18 THE REGISTRAR: 270.

19 THE COMMISSIONER: I am sorry, I'm out by 100.

20 THE REGISTRAR: 270 and 271.

21 **EXHIBIT 270: Curriculum Vitae of Michael Barron**

22 **EXHIBIT 271: Curriculum Vitae of Timothy Law**

23 MR. ISAAC:

24 Q Mr. Barron, beginning with you, please if you
25 would describe for the Commissioner your

1 educational and professional background and in
2 particular your experience with corporate
3 transparency issues?

4 A (MB) Certainly. So my background and education
5 I actually start off as a Middle East expert so
6 I studied Arabic at the University of Edinburgh
7 in Scotland. One of my early jobs was working
8 for Control Risks Group which you may have come
9 across is a leading -- it's a London-based
10 leading due diligence provider and during my
11 time there one of the projects I worked on was
12 to contribute to report on and corruption or
13 anti-corruption called *No Hiding Place*.

14 I subsequently worked for myself as a
15 freelance consultant and then joined BG Group,
16 at the time one of the UK's leading oil and gas
17 companies where among my responsibilities I took
18 on lead responsibility for the transparency
19 agenda and particularly the company's
20 relationship with the extractive industries
21 transparency initiative, which I'm sure we'll
22 speak about more in due course. And I left BG
23 Group in the summer of 2014 and since then have
24 focused as an independent consultant on
25 transparency and governance issues, particularly

1 around the EITI but not solely, and particularly
2 around beneficial ownership. So I have been
3 part of teams delivering on beneficial ownership
4 projects in various countries, Ethiopia,
5 Azerbaijan, currently working on a project in
6 Ghana and one of the three co-authors of the
7 paper *Towards a Global Norm of Beneficial*
8 *Ownership Transparency* which was commissioned by
9 the British government in late 2018 and
10 published in 2019.

11 Q Thank you. And similarly, Mr. Law, if you would
12 please briefly describe for the Commissioner
13 your own educational and professional background
14 and your experience with corporate transparency
15 issues?

16 A (TL) Yes, absolutely. So I'm a UK qualified
17 chartered accountant and fellow of the Institute
18 of Chartered Accountants in England and Wales.
19 I qualified with what I think back then was one
20 of the big six accounting firms, the number
21 decreases, Coopers & Lybrand. I then moved into
22 industry and worked for some years for one of
23 the UK television companies as a tax
24 professional before moving to Anglo American
25 PLC, the global mining company, where I spent

1 about 12 years where my responsibilities
2 included the tax transparency agenda,
3 stakeholder engagement and reputation, globally
4 for the Anglo American group, including being
5 involved in tax policy and transparency policy
6 negotiations both in the UK but also at an EU
7 and OECD level. I have been an independent
8 consultant now for a little over six years
9 working on a number of projects around the world
10 in the transparency and governance arena. Many
11 of them are the same projects that Michael has
12 already described where we've worked together on
13 implementing beneficial ownership or related
14 projects in a number of places around the world.
15 I also advise large multinational businesses on
16 how they communicate about their own
17 transparency and private sector engagement with
18 stakeholders on transparency and reputation
19 matters.

20 Q Thank you. And, Mr. Barron, you referred to a
21 paper *Towards a Global Norm* that had been
22 commissioned by the UK government and I'd like
23 to turn to that report now.

24 MR. ISAAC: Madam Registrar, if we could bring up the
25 document at tab 3, please.

1 Q And, Mr. Barron, is this the report that you
2 were referring to?

3 A (MB) It is, yes.

4 MR. ISAAC: Okay. Thank you, if we could please mark
5 that as the next exhibit, Madam Registrar.

6 THE COMMISSIONER: 272.

7 THE REGISTRAR: Exhibit 272.

8 **EXHIBIT 272: Towards a Global Norm of**
9 **Beneficial Ownership - A scoping study on a**
10 **strategic approach to achieving a global norm -**
11 **March 2019**

12 MR. ISAAC:

13 Q And I will be through the course of your
14 testimony today, I will be referring to the
15 page numbers and when I do that I'll be
16 referring to the page numbers in the PDF
17 document itself which are one page ahead of the
18 page numbers that are shown on the bottom right
19 corner. But if we're off please let me know if
20 you're not looking at the same portion of the
21 report, please. Would you begin please by
22 explaining who commissioned this report?

23 A (MB) Certainly. So the report was commissioned
24 by Department For International Development, I
25 think what was then DFID. That department of

1 British government no longer exists. Earlier
2 this year it was merged with the Foreign and
3 Commonwealth Office, but I'll refer to DFID just
4 for ease of reference for this.

5 So DFID actually commissioned a consultancy
6 called Adam Smith International to undertake the
7 research and produce the paper and Adam Smith
8 International in turn asked myself Tim Law and
9 another consultant Justine Davila to produce a
10 report to undertake the research and to draft
11 and write the report which was conducted in two
12 phases.

13 So it was an initial very short paper
14 produced as supporting documentation to a
15 session at an anti-corruption conference in
16 Copenhagen in October 2018 and then the longer
17 paper which you see on the screen in front of
18 you was then published later in 2019.

19 Q Thank you. You mentioned a third co-author of
20 the report, Ms. Davila. Would you please
21 explain who Ms. Davila is and what her role was
22 in preparing report?

23 A (MB) So she's an anti-corruption expert who used
24 to work for DFID and is now an independent
25 consultant and she was the team lead on the

1 project and between the three of us we undertook
2 the research and production of the report.

3 Q Thank you. And what was the question that you
4 were asked by the UK government to undertake in
5 this report?

6 A Essentially the question we were set was what
7 would it take, what action or actions would be
8 required to achieve a global norm of beneficial
9 ownership transparency. That was the question.
10 This was part of work that the British
11 government were doing and continue to do at the
12 time to promote beneficial ownership
13 transparency around the globe as part of their
14 anti-corruption efforts and fight against
15 economic crimes.

16 Q Would you please -- you described two phases.
17 Would you explain please the work that you
18 undertook along with Mr. Law and Ms. Davila in
19 producing this report, please.

20 A (MB) Certainly, so the research was a
21 combination of interviews and in the appendix to
22 the report there is a list of organizations,
23 representatives of whom we interviewed. We also
24 undertook desktop research of the literature on
25 beneficial ownership, publications from a lot of

1 the organizations mentioned in the report. Yes,
2 it was a combination of interviews and desktop
3 research.

4 Q Thank you. Madam Registrar, if we could go to
5 page 96, please, of the report.

6 And this is -- you referred to the appendix
7 the stakeholder that you interviewed and engaged
8 with. Is this here on pages 96 and 97 is that a
9 list of the entities that you --

10 A It is, yes.

11 Q -- interviewed.

12 A Yeah.

13 Q And did you engage with any Canadian entities?

14 A (MB) Yeah, about halfway down towards the bottom
15 of page 96 there's a list under "other
16 governments" and there you'll see we talked to a
17 representative of the federal Department of
18 Finance in Canada.

19 Q Thank you. If we go back up to page 4, please,
20 of the report. This is the table of contents
21 and just very briefly if you could just explain
22 the structure of the report and just very
23 briefly what the main portions of the report
24 address.

25 A (MB) Yes. So the report was starts out by

1 looking at the what the current situation at the
2 time, this is late 2018, early 2019, the current
3 situation was in terms of what was already --
4 what initiatives were already underway to
5 promote or to implement beneficial ownership
6 transparency. So we looked at what we termed
7 international architecture, which was
8 organizations like FATF and its standards and
9 requirements of beneficial ownership, other
10 international organizations like OECD. We also
11 looked at other regional efforts, what the EU is
12 doing, what the Extractive Industries
13 Transparency Initiative, EITI, is doing. And
14 then we looked at six specific case studies from
15 specific countries which are listed in the table
16 of contents there, Denmark, France, Ghana,
17 Nigeria, the UK itself and Ukraine. And these
18 countries were selected in agreement with DFID.
19 DFID wants to focus on countries in which it had
20 large projects, that's now Ghana and Nigeria and
21 Ukraine made it on to the list. Also countries
22 which were either in the forefront of or were in
23 the process of implementing of beneficial
24 ownership. So again Denmark is one of those and
25 Ukraine as well. And France is a kind of near

1 neighbour and a representative of another large
2 European country that was also -- it was
3 implementing beneficial ownership but it also
4 had run into some challenges.

5 Q And then the section two, the benefits.

6 A (MB) And then we go on to look at what the
7 potential benefits and impact to beneficial
8 ownership transparency is, really focusing on
9 impact of benefit for anti-money laundering and
10 anti-corruption. The potential benefits not
11 just to combatting those kind of illicit
12 activities but also benefits to the economy.
13 And we set out in section 2.4 in fact the
14 business case for beneficial ownership
15 transparency, why this is a benefit to business
16 in the private sector. And then in section 3 we
17 go through, we describe what is required to set
18 up and open and publicly accessible register,
19 and then an important element particularly for
20 DFID was what technical support is currently
21 available. Technical assistance is currently
22 available to countries to look into setting up a
23 register and what more could be required. And
24 then section 5 looks at we set out four options
25 for future approaches to promoting a global norm

1 of beneficial ownership transparency from
2 option 1, which is basically carrying on as they
3 were in early 2019, kind of organic growth.
4 Option 2 is kind of scaling that up, a bit more
5 concerted effort. And then options 3 and 4 are
6 really a kind of more concerted international
7 campaign and option 4 brings together various
8 other elements, a kind of multi-pronged
9 approach, including strong advocacy and push
10 from private sector actors to promote beneficial
11 ownership transparency. And then in section 6
12 we look at what technical support, technical
13 assistance would be needed to implement each of
14 those options and we end with suggested next
15 steps in section 7.

16 Q Thank you. And you noted this report was
17 completed in March of 2019. Has your and
18 Mr. Law's work on the topic of beneficial
19 ownership continued since that date?

20 A (MB) It has. So since that time we have
21 finished a project in Azerbaijan to help the
22 state wealth fund, the sovereign wealth fund in
23 Azerbaijan set up a beneficial ownership
24 register for the oil and gas and mining sector
25 there. We are currently working on helping the

1 government of Ghana set up a beneficial
2 ownership register. We also did a followup
3 piece of work for DFID on the role of the
4 private sector in beneficial ownership
5 transparency, the role of the private sector as
6 both a user of beneficial ownership information
7 and potential advocate for beneficial ownership
8 transparency. Yeah, so that's some of the work
9 we've done in the last 18 months or so.

10 Q Thank you. I understand that the recent work
11 for the UK government has not yet been
12 authorized for public disclosure but that we may
13 touch on some of the findings at least as they
14 are at this point; is that right?

15 A (MB) That's right. Yes.

16 Q Okay. So if we could turn, please, to page 11
17 of the report. And you describe this as
18 beginning and looking at what you termed the
19 international architecture. And at figure 1.1
20 there's a diagram here. Perhaps, Mr. Law, would
21 you just explain what is illustrated in this
22 figure?

23 A (TL) Yes, absolutely. So this Venn diagram is
24 intended to show the landscape at the point at
25 which this report was produced. And I should

1 make it clear this was a snapshot at that time
2 and the sands are constantly shifting, so a
3 similar diagram now would obviously look
4 somewhat different. But in the context of this
5 discussion and looking at this particular
6 diagram, what this is intended to show is the
7 status of countries around the world with
8 respect to a number of different criteria. So
9 the first three of those are around beneficial
10 ownership disclosure and the remaining around
11 beneficial ownership transparency. And it's
12 probably worth at this point me stating what we
13 mean by those two terms because I think we'll
14 probably end up using those two and it's
15 important to understand the distinction for the
16 purposes of this report between when we refer to
17 beneficial ownership disclosure and when we
18 refer to beneficial ownership transparency. By
19 beneficial ownership disclosure we mean that
20 businesses understand and are in a position to
21 disclose who the ultimate beneficial owners of
22 the business are. By beneficial ownership
23 transparency we mean that that information is
24 made public. It's put into the public domain
25 via a public register of beneficial ownership.

1 centre which is the G20 and this refers to the
2 G20 commitments that were made in 2014 to
3 support the principles of transparency and
4 beneficial ownership, or disclosure of
5 beneficial ownership, I should say. So it's
6 worth pausing at that point in that there are a
7 number of countries that fall in all three of
8 those ellipses. There are 12 of them and you'll
9 see the 12 in the top left of the diagram. And
10 at the time that this diagram was put together
11 Canada would be one of those 12 countries. So
12 that's where Canada sits on this diagram.

13 Moving on to beneficial ownership
14 transparency requirements, the first of those is
15 the Extractive Industries Transparency
16 Initiative. So in the Extractive Industries
17 Transparency Initiative 2016 standard it
18 includes a requirement that the countries that
19 are signed up to EITI, which are just over 50
20 countries, must have a register or beneficial
21 ownership, a public register of beneficial
22 ownership of companies that are active in the
23 extractive sector in that country. So the
24 countries that are within that circle are those
25 that sign up to that requirement. Again that is

1 not a measure necessarily of whether they have
2 achieved that, and I'm sure we'll talk a little
3 bit later about levels of compliance with the
4 EITI standard.

5 The next ellipse, the orange coloured one,
6 covers those countries that made commitments to
7 public registers of beneficial ownership at the
8 anti-corruption conference in London in 2016.
9 And there are a number of those. The next
10 circle is the brown one, which is the EU. So
11 this is driven by the EU anti-money laundering
12 directives number 4 and 5 which include
13 requirements that EU member states introduce
14 public registers of beneficial ownership. So
15 the EU member states are captured within that
16 brown ellipse. And as I've already mentioned
17 this is obviously a snapshot at the time the
18 report was produced, so we're all aware that
19 there's been one change to that ellipse since.

20 The next one is the Open Government
21 Partnership commitments, so there are two purple
22 ellipse on this diagram which represent those
23 countries which at the time of publication had
24 made commitments under the OGP to introduce
25 public registers of beneficial ownership. And

1 then finally, the green circles are those three
2 countries which at the time of publication had
3 in place public registers of beneficial
4 ownership. So that's the UK, Ukraine and
5 Denmark and obviously they sit within three
6 separate spaces on the diagram because of the
7 other ellipses that they need to fit into.

8 The purpose of this diagram really was to
9 show that that although there are a lot of
10 countries that are sitting within the FATF and
11 OECD circles on this diagram, there are then a
12 much smaller number of countries that have taken
13 further steps towards public registers of
14 beneficial ownership and that there are even
15 smaller group still of countries that were
16 sitting in multiple ellipses and were therefore
17 taking the leadership role within the agenda for
18 a global norm in beneficial ownership
19 transparency.

20 So the intention of this diagram really was
21 to demonstrate the fact that there are a number
22 of countries that have taken significant steps,
23 but there are still a large number of countries
24 which are sitting only within the FATF or FATF
25 and OECD circles. So hopefully that allows this

1 fairly complicated diagram to make a little more
2 sense.

3 Q Thank you, it does. I'd like to look at some of
4 the specific elements of this international
5 architecture. And in particular, you describe
6 on page 12 of the report about the FATF
7 standards, the Financial Action Task Force
8 standards, and you describe those and that's
9 reflected in the diagram, the standards that
10 have the broadest coverage. And there's a
11 reference to recommendations 24 and 25 in
12 intermediate outcome 5. Would you please
13 explain what those FATF standards are, please.

14 A (TL) Yes. So the two recommendation, the
15 recommendation 24 and 25 broadly speaking apply
16 to corporate entities and trusts respectively.
17 And the FATF requirement or FATF recommendation
18 is that countries should have put in place
19 measures whereby in the case of recommendation
20 24 companies know who their ultimate beneficial
21 owners are and are able to provide that
22 information on request, but that does not go as
23 far as a requirement for that information to be
24 put into the public domain.

25 And I might hand to Michael Barron to talk

1 about the intermediate outcome 5.

2 (MB) FATF intermediate outcome 5 is trying
3 to measure the effectiveness of implementation
4 or recommendation 24 and 25, so it looks at how
5 effectively a government can get access to
6 beneficial ownership information, accurate
7 beneficial ownership, in a timely manner and all
8 countries at FATF and its associated region
9 bodies and take evaluations of each country on
10 an eight year cycle and assess each country on a
11 scale both for meeting the recommendations and
12 for meeting the intermediate outcomes.

13 Q Thank you. And in the report you indicate that
14 there is -- that since 2014 FATF has been
15 assessing both technical compliance as well as
16 that effectiveness as part of its mutual
17 evaluation process but the technical compliance
18 with the standards has not necessarily ensured
19 effectiveness. Can you explain what you mean by
20 that please?

21 A (MB) So in cases where countries have done in
22 fact the minimum required under
23 recommendation 24, and really the minimum
24 required under recommendation 24 is that
25 companies or legal persons understand who their

1 beneficial owners are and record that
2 information and retain that information and make
3 it available on request to law enforcement. And
4 there are certain other elements, criteria on
5 recommendation 24 about having an appropriate
6 risk assessment of how legal persons might be
7 used for anti-money laundering activities and
8 measures to address issues like bearer shares
9 and other forms of ownership. And it's been so
10 countries can do the minimum required under FATF
11 recommendation 24 but still not have an
12 effective regime in place to collect and
13 disclose beneficial ownership information to law
14 enforcement.

15 So there are several examples of countries
16 around the world that have introduced the kind
17 of minimal form of beneficial ownership
18 disclosure requirement for recommendation 24 but
19 have still not been found fully compliant with
20 the recommendation and have received a low
21 effectiveness rating under IO5. And FATF
22 recognized this and in October last year
23 published a best practice report which
24 essentially made the point that doing the
25 minimum is not enough, that a combination of

1 initiatives and activities are required in order
2 to meet the standard of recommendation 24 and to
3 ensure a high rating for IO5.

4 Q Now, the report references the status of various
5 countries with respect to compliance with these
6 recommendations and intermediate outcomes as at
7 the time of this report. Do you know, at least
8 in the fourth rounds of the mutual evaluating
9 process, do you know at the time at least of
10 this report how Canada was assessed and whether
11 or not it was assessed to be compliant with the
12 recommendations in the fourth round?

13 A (MB) So Canada was assessed in 2016. The rating
14 it was given for recommendation 24 was partially
15 compliant and for recommendation 25 it was not
16 compliant, I think. And it received --

17 (TL) That's correct.

18 (MB) Sorry?

19 (TL) That's correct.

20 (MB) And for IO5, just one moment. It was
21 rated as... I've got it here in front of me. I
22 think it was rated as moderate for IO5, but
23 there were some -- some of the key findings for
24 Canada included reference, in its FATF mutual
25 evaluation there was a statement of finding that

1 Canadian legal entities and legal arrangements
2 were at a high risk of misuse for money
3 laundering and terrorist financing purposes. It
4 said that basic information on legal persons is
5 publicly available but beneficial information is
6 more difficult to obtain. And then there were
7 some findings on trusts as well and there was
8 also a finding that law enforcement agencies
9 have successfully identified beneficial owners
10 in limited instances only. So there was some --
11 yeah. Those were the kind of headlines of the
12 findings in the 2016 evaluation.

13 Q You describe in the report the lack of progress
14 on effectiveness, it's not just the global lack
15 of progress on effectiveness under the FATF
16 standards, as having been a driver to go beyond
17 those standards. Can you explain what you mean
18 by that, please.

19 A (MB) So I think there was a realization in --
20 well, there was a realization amongst some civil
21 society organizations who campaigned on these
22 issues and amongst some governments that the
23 FATF standards, the FATF requirements don't go
24 far enough in terms of beneficial ownership and
25 that countries are maybe focusing on other

1 aspects of the FATF recommendations. After all
2 there are 40 separate recommendations under the
3 FATF standards. So lots of countries have to
4 have and take quite a lot of effort to comply
5 with all of these 40 recommendations. And there
6 is events such as the leaks of papers known
7 as -- you know, the Panama Papers and the
8 Paradise Papers kind of focused attention on the
9 importance of beneficial ownership and
10 understanding who really benefits from some of
11 these complex corporate structures and where the
12 money flows in terms of money laundering or
13 other forms of corruption.

14 And so there's been a campaign and pressure
15 for some time for more to be done on beneficial
16 ownership. That's reflected in initiatives like
17 the EITI making it a requirement of its own
18 standard and the EU making public registers part
19 of AMLD4 and 5.

20 Q That leads us directly into looking at the next
21 portion of the report which is looking at the
22 regional norms. And you mentioned one the of
23 the primary ones there described in the report
24 which is the EU's anti-money laundering
25 directives. If we go to page 18 of the report,

1 please. There is a heading 1.1.2 "Regional Norm
2 Encompassing Publicly Accessible Registers."
3 And under there you refer to the European
4 Union's emerging regional norm including the
5 Fifth Anti-Money Laundering Directive. Would
6 you please explain for the Commissioner what the
7 Fifth Anti-Money Laundering Directive
8 requirements were in relation to beneficial
9 ownership transparency?

10 A (TL) Yeah, shall I talk about that one? So the
11 Fifth Anti-Money Laundering Directive which came
12 into force in 2018 and had a requirement that it
13 be adopted by member states into their
14 legislation by January 2020 had a number of
15 requirements in there, but the key most relevant
16 one was the requirement to implement publicly
17 accessible beneficial ownership registers for
18 all corporate and legal entities by January of
19 this year, 2020. And to have a similar register
20 of beneficial ownership for trusts and similar
21 arrangements in different member states by
22 March of 2020, but that to be accessible to
23 competent authorities and law enforcement or
24 other persons when they can demonstrate a
25 legitimate interest to have that information.

1 But as far as corporate beneficial owners or the
2 beneficial owners of companies it required
3 public registers to be implemented in all EU
4 member states. It also went on to have a
5 requirement for future interconnected registers
6 so that the registers would be interoperable and
7 work in conjunction with each other and for
8 member states to put in place verification
9 measures in order to ensure the quality of the
10 data in those registers.

11 So I mean, I think that was seen by many as
12 being a kind of -- a critical moment, I suppose,
13 in the adoption of public registers of
14 beneficial ownership going from having at the
15 stage of this report was written three registers
16 up and running to having an EU-wide requirement
17 for transparency and disclosure and beneficial
18 ownership. So those are kind of the key
19 requirements of AMLD5.

20 Q In the report you identified two areas where you
21 say the Fifth Anti-Money Laundering Directive
22 falls perhaps a bit short in establishing a
23 truly comprehensive norm around beneficial
24 ownership transparency, on page 19 of the
25 report. And those two are one is open data

1 formats and the second is around fee for access.
2 And I'd like to just explore those two issues a
3 little bit further. So the first in terms of
4 open data formats. What is an open data format
5 and what is its significance, please?

6 A (TL) I suppose both of these issues come out of
7 the kind of fundamental process that happens
8 with EU directives being then adopted into
9 domestic legislation in that an EU directive
10 will provide the bones on which legislation is
11 built but will leave individual member states to
12 implement that and with a concern amount of
13 ability to interpret the directive in the way
14 that is appropriate or that they choose to for
15 domestic purposes. So I suppose to an extent
16 this subject is not alone in having some of
17 these non-convergence applications, but in
18 particular on this one, open data formats, and
19 this really goes back to the standardization of
20 beneficial ownership registers and the ability
21 to have an architecture in the register itself
22 which allows for the interconnectedness of
23 registers so that information can be shared
24 across them, and the direct comparison and
25 comparability of registers in one jurisdiction

1 to another. So I think we'll probably come on
2 later to talk about some of the specifics of the
3 beneficial ownership data standard which the
4 organization Open Ownership has developed.

5 In terms of the second --

6 Q Sorry, before you move on for that, when you
7 look at the issue of interoperability, so the
8 ability of one registry to operate with another,
9 are there perhaps lessons or significance that
10 you draw for a group like the European Union and
11 the importance of interoperability in that
12 context that in Canada looking at potentially
13 creating a provincial registry that may need to
14 be able to be interoperable with other
15 provincial registries or a federal registry or
16 internationally, do you think there are
17 parallels to be drawn there in terms of the
18 significance of that?

19 A (TL) I think there are. So I think it's
20 important that when looking at the development
21 of a registry particularly where there is a
22 particular reason for registries to be
23 interoperable. So the EU is an example of that
24 in terms of that the requirements within the
25 directive for there to be an element of

1 interoperability and centralization and
2 obviously in a federal system where there are
3 localized registers and it makes practical sense
4 for those registers to be able to work together
5 and share data and share architecture.

6 There's a little bit that goes beyond that
7 as well, though, because it's important that
8 that's not just about the IT infrastructure.
9 It's also about thinking about the design of a
10 beneficial ownership regime, which I'm sure
11 we'll come on to in a bit more detail. But at
12 that design phase there is also a need to have
13 some consistency because otherwise you may well
14 have systems that can talk to each other, but
15 those systems are implementing a differently
16 designed beneficial ownership regime and
17 therefore there may be sort of conflicting
18 information in there if one registry has
19 defined -- we're going to talk about politically
20 exposed persons later, I'm sure -- defined the
21 politically exposed person in a different way
22 from the way another register has.

23 Q Thank you. We will return to speak about some
24 of the issues that you identified, the data
25 standards and other aspects of looking at the

1 practical steps to achieve that
2 interoperability. I think you were going to go
3 on, Mr. Law, before I interrupted you to discuss
4 the second issue, which is the fee to access the
5 registry. Would you please describe what that
6 issue is and what its significance is.

7 A (TL) Yes. So the EU directive does allow member
8 states to charge a fee for access to beneficial
9 ownership information in their public registers.
10 Not all have chosen to do so, so the UK registry
11 for example is free to access and there's no
12 need to register or make a payment in order to
13 get information out of the register.

14 Incidentally the way the UK achieves that is by
15 charging a small fee to businesses when they put
16 the information into the register. So it's
17 captured at that point in the process rather
18 than when people are extracting information.

19 And it comes down to a debate that is
20 sometimes being described as is the information
21 freely available or available for free. And the
22 distinction between those two. What the
23 anti-money laundering directive requires is that
24 the information is freely available. What it
25 doesn't require is that the information is

1 variable for free.

2 Q In this portion of the report on page 19 it
3 expresses in the passive voice that:

4 "It has been argued that by not charging
5 there is likely to be a higher volume of
6 usage and more independent scrutiny to
7 correct data, for example, by civil
8 society."

9 And then noting there that use of the UK
10 register increased markedly after fees were
11 abolished.

12 Just pausing there, is there evidence from
13 jurisdictions that have implemented beneficial
14 ownership transparency registries about what the
15 effect of having a pay wall is on both the use
16 and utility of a registry? And what is your
17 perspective on that, please?

18 A (TL) I think there are a number of concerns that
19 are expressed with registries where there is a
20 pay wall. And you can probably break those down
21 into two categories. There are the pure
22 financial concerns, so it potentially restricts
23 access to that information for people who are
24 not able to pay the fee because they simply
25 don't have the funds to do so, or organizations

1 paragraph on page 19 you indicate that the
2 European Union has gone further by introducing
3 additional measures to ensure adequate accurate
4 and current information in the register by
5 requiring obliged entities and competent
6 authorities to report discrepancies that they
7 find between beneficial ownership information in
8 the registry and other beneficial ownership
9 information available to them.

10 Can you explain that discrepancy reporting
11 aspect a little further and then perhaps explain
12 how some jurisdictions have implemented that
13 sort of requirement?

14 A (TL) Yes, absolutely. I think probably the UK
15 register is as good an example to use as any.
16 So as of earlier this year there was a
17 requirement that any regulated body, so a
18 chartered accountant, lawyer, bank, so myself as
19 a chartered accountant, for example, to the
20 extent that I discover that the beneficial
21 ownership information on a company, whether it
22 be a client of mine or not, but let's say a
23 client, on the register is not the same as the
24 beneficial ownership information that I have
25 about that company through my own due diligence

1 and KYC, et cetera, requirements, there is an
2 obligation on me to report that to the register
3 that there is a discrepancy in the data in order
4 that that can then be investigated. Now, it's
5 worth noting that the UK has since the register
6 began had a voluntary reporting process, so on
7 every page of the UK register there is a button
8 which you can click to report that you think
9 that something on that page is at odds with what
10 you think to be the true fact pattern. But what
11 has moved further is placing that as an
12 obligation on chartered accountants, lawyers and
13 others to report those discrepancies when they
14 find them.

15 It doesn't extend as far as requiring those
16 people to actively seek out errors in the
17 register, but it does require us to report them
18 if we identify them.

19 Q And in your opinion has that been an important
20 or is there any evidence that it's been an
21 effective feature of beneficial ownership
22 registries that have implemented it?

23 A (TL) It's one of a suite of measures that can be
24 used to improve the quality of data in a
25 beneficial ownership register. I don't think

1 there's one silver bullet solution to having
2 high quality beneficial ownership data, but
3 having the combination of publicly available
4 data so there are people looking at it and
5 identifying potential discrepancies or red flags
6 combined with an obligation on financial
7 institutions and advisors to report
8 discrepancies when they find them is certainly
9 an effective tool as part of the broader
10 verification process.

11 Q Thank you. And if we move on from the European
12 Union's regional norm, on page 20 of the report,
13 if we could go ahead there, Madam Registrar,
14 under the heading "Pioneering Efforts to
15 Establish a Norm in a Sector" there is a
16 reference here to the Extractive Industry
17 Transparency Initiative, and you made reference
18 to that earlier in your testimony, and if you
19 could just explain, please, what the EITI is as
20 well as any lessons you think should be drawn
21 from the experience of EITI.

22 A (MB) Should I respond to that?

23 Q Please. I should note I direct questions often
24 to the panel generally, so please feel free to
25 choose who would like to take the lead and if

1 either of you wishes to add anything at the end,
2 please do so.

3 A (MB) Certainly. So EITI, Extractive Industries
4 Transparency Initiative, was set up in 2003
5 based on I suppose an idea or a speech that
6 British Prime Minister Tony Blair made the
7 previous year in 2002 at a World Sustainability
8 Conference and it was set up to try and address
9 this issue of how much -- disclosing how much
10 legitimate payments in terms of taxes and so
11 forth that extractive companies make to
12 government and reconciling that with the
13 information about the amount of revenue
14 governments receive. So initially it was to
15 bring together governments, the companies, who
16 are the oil and gas and mining companies, and
17 civil society into kind of tripartite structure
18 to provide more transparency about the
19 extractive sector and to put information into
20 public domain so the governments could be held
21 accountable for the revenues they earn from the
22 exploitation of oil, gas and minerals. So it
23 was set up in 2003. It has an international
24 board which has equal representatives of private
25 sector industry, the governments and civil

1 society, has a small secretariat based in Oslo
2 in Norway and has a standard which sets out the
3 requirements that should be met by each
4 implementing country. It should be said that
5 there's no international treaty to support the
6 EITI. It's a purely voluntary initiative.
7 Governments choose to sign up. Some governments
8 after they have signed up have passed
9 legislation to make it mandatory in a particular
10 country to comply with the EITI, so for example,
11 in Nigeria there's an act in 2007 to embed
12 compliance with the EITI into Nigerian
13 legislation. Since it's set up, the EITI has
14 had several versions of its standards. The most
15 recent one was one published in June last year,
16 the 2019 standard. As I think we referred to
17 already in the 2016 version of the standard it
18 introduced a requirement for beneficial
19 ownership transparency. This is just one of a
20 number of requirements in the EITI. The core of
21 the EITI still remains that reconciliation
22 between tax payments by companies and the
23 revenue received by governments. But obviously
24 it's important to understand who owns the
25 companies that are paying those taxes and

1 there's also requirements now for contract
2 transparency to understand the terms behind each
3 oil, gas or mining contract.

4 And after the beneficial ownership
5 requirement was set up in 2016, implementing
6 countries, of which there are now -- I think
7 there were 51 at the time we wrote this report.
8 I think there's now 53 implementing countries
9 across most continents. Canada is not an
10 implementing country, but for example the United
11 Kingdom is and then there's across the globe in
12 Africa, Latin America, Asia and so forth.

13 Implementing countries were given until --
14 were given two years to come up with a kind of
15 road map on how to implement a public beneficial
16 ownership registry for the extractive sector and
17 were given a deadline of the 1st of January 2020
18 to have the register in place.

19 It has to be said the level of compliance is
20 very low. Very few of those 53 implementing
21 countries as we speak today have a fully
22 functioning beneficial ownership register in
23 place. And we are aware of a number of
24 countries are still in the process of trying to
25 scope this out and to implement this and some of

1 the reasons for that are what is specifically
2 set out in the case of EITI in this report but
3 are referenced later on when we talk about the
4 challenges of setting up a registry. It's a
5 lack of -- in some cases a lack of political
6 will. In a lot of cases because the EITI is
7 essentially a voluntary commitment, a voluntary
8 initiative, in many countries there's a lack of
9 legal imperative for companies to comply, and
10 there are also issues about budgets, resources
11 available to implement not just the beneficial
12 ownership requirement to the EITI standard but
13 other aspects of the EITI standard as well.

14 Q Thank you. And if we go down on page 21 of the
15 report under the heading "Tools For Open Data
16 and Interoperability." We touched on this
17 earlier, but it introduces the concept here of
18 Beneficial Ownership Data Standard, or BODS.
19 Can you explain what beneficial ownership data
20 standard is and what its significant is, please.

21 A (TL) Yes, shall I start on that one. So the
22 Beneficial Ownership Data Standard was created
23 really to answer the challenge of the
24 interoperability of beneficial ownership
25 registers and the ability of those registers to

1 speak to each other. And another reason why
2 that is important is if you think about a
3 complex international ownership structure where
4 there may be a company in country A held through
5 a number of intermediate holding companies in
6 different jurisdictions and ultimate beneficial
7 owner in country B, if those intermediate
8 countries have registers of beneficial ownership
9 and those registers can then talk to each other,
10 the information in them in effect part verifies
11 what is in the other register. So it improves
12 the quality of the data because the entire
13 structure gets embedded within a combination of
14 different beneficial ownership registers in
15 different jurisdictions. So they're seen as a
16 value in having interoperable and
17 intercommunicating beneficial ownership
18 registers. But an important part of that is
19 having something standardized in terms of the IT
20 architecture of how this information is stored
21 and therefore how it can be shared between
22 registers.

23 So the concept of the Beneficial Ownership
24 Data Standard is it's that technical tool, that
25 technical architecture to take the raw

1 beneficial ownership data and put it into a
2 structure whereby it can be shared between
3 registers and those registers talk to each other
4 and be interoperable.

5 Q You describe here that the Beneficial Ownership
6 Data Standard was developed by with support with
7 a group called Open Ownership. What is Open
8 Ownership, please.

9 A (TL) Open Ownership is an organization which is
10 funded I believe by the World Bank and UK
11 government. And it's remit is to support that
12 technical implementation. So the technical
13 process of taking beneficial ownership data into
14 a register and then the sharing of that
15 information across different -- you know,
16 between registers. So it is -- I would say it's
17 an organization that provides technical
18 assistance to countries that are in the process
19 of developing and implementing beneficial
20 ownership registers particularly around that
21 element in terms of the architecture of the
22 register and the interoperability of that
23 register with other jurisdictions.

24 Q The first paragraph under here describes the
25 position of Open Ownership, this entity you just

1 described, as arguing that building this
2 approach into registers at the outset is an
3 important investment to deliver the objectives
4 that are sought. Would you agree with that?
5 Would you recommend that a jurisdiction looking
6 to implement a beneficial ownership registry
7 adopt a beneficial ownership data standard?

8 A (TL) I think to the extent that jurisdictions
9 are -- see themselves on a pathway to
10 interoperability and international cooperation
11 on this information is a goal, then there are
12 clearly benefits in embedding that principle
13 into the architecture that you build to store
14 this information when you do it first rather
15 than having to come back and reinvent the way
16 that your register is structured from a
17 technology perspective at a later date.

18 So, yes, clearly if that is the path that a
19 country is it looking to go down and I think
20 particularly in situations where there is an
21 imperative for that interoperability, and so it
22 might be that Canada is an example of that where
23 interoperability across the country is an
24 important objective perhaps that having that
25 interoperability build into the architecture of

1 the register at an early stage would seem a
2 logical approach.

3 Q Thank you.

4 A (MB) Can I just make a comment and just kind of
5 maybe a word of caution is that I think some
6 countries have been tempted to jump quite early
7 on to what is the IT architecture that we need
8 to implement a beneficial ownership registry and
9 risk wasting time and more importantly money in
10 doing so before they have kind of thought
11 through the design or the beneficial ownership
12 regime, what data they want to collect, how they
13 are going to collect it, the scope, you know,
14 how they define beneficial owner, there's a
15 whole range of decisions, policy decisions they
16 have to make before they can hand over to IT
17 experts and say we want a system that collects
18 this information and publishes it in a certain
19 way.

20 Q So I suppose it would be fair to say,
21 Mr. Barron, that your view is that focus should
22 go into first what's going to be in the register
23 and how to assure that it's accurate and useful
24 and then the question of how that's presented on
25 an IT side is sort of the question that comes

1 after. Is that fair?

2 A (MB) Absolutely. But having in the back of
3 their mind that you want this system, you know,
4 you may want it to eventually talk to other
5 registers across the world, which is a very
6 useful function. As Tim has said, you know,
7 it's important especially when companies may be
8 owned across several jurisdictions.

9 Q Thank you. If we go ahead to page 22 of your
10 report. There's a heading "Open Government
11 Partnership" and some reference there. Would
12 you just briefly describe for the commission
13 what the Open Government Partnership is, please?

14 A (MB) The Open Government Partnership is a civil
15 society organization which brings together
16 governments and civil society organizations to
17 as a -- it provides a platform for them to
18 collaborate and to advance initiatives to create
19 more open governments, greater transparency, not
20 just in terms of beneficial ownership, but Open
21 Government Partnership has dealt with -- deals
22 with issues like public procurement, Freedom of
23 Information more generally, so its government
24 members include both national governments and
25 subnational governments, provincial governments

1 or state governments or whatever the appropriate
2 subnational division is in a country and a range
3 of civil society organizations that are active
4 in this area. Again, it has an international --
5 I think it's called an international advisory
6 panel and a secretariat here in London, based in
7 London. And has a process in each country when
8 the government and local civil society come
9 together to create action plans to advance a
10 kind of open government agenda and beneficial
11 ownership commitments on beneficial ownership
12 can be part of the action plan. They are in
13 some cases. Not every country has a commitment
14 in this area.

15 Q And you note actually in I believe the second
16 full paragraph under this heading that in
17 May 2019 Canada was the incoming chair of the
18 Open Government Partnership and reference there
19 to its action plan.

20 MR. ISAAC: Madam Registrar, if we could bring up the
21 document at tab 4, please.

22 Q There is a reference to this document in the
23 footnote to Canada's action plan. Is this the
24 document that you are referring to here in the
25 report?

1 A (MB) yes.

2 Q If we go to page 23, please, of this document is
3 this the portion where you reference in the
4 report in terms of the commitment that Canada
5 made in its action plan for working towards
6 transparency?

7 A (MB) It is. So in this document the Government
8 of Canada, the Federal Government of Canada is
9 committed to kind of working with the provinces
10 and territories to -- so previously, as you see
11 there, there is a reference to an agreement
12 between the provinces and territories reached in
13 December 2017 to strengthen beneficial ownership
14 and they want to kind of work together to
15 implement that agreement and to create a
16 nationwide beneficial ownership, probably a
17 series of registers rather than a single
18 register, and this is led by the department of
19 finance, the federal department of finance in
20 Ottawa. And as I said we spoke to a
21 representative of that department as part of the
22 research for our report.

23 MR. ISAAC: Thank you. If we could mark this,
24 please, as the next exhibit, and then we can put
25 this document down, please.

1 THE COMMISSIONER: 273, Madam Registrar.

2 THE REGISTRAR: Yes, exhibit 273.

3 **EXHIBIT 273: Canada's 2018-2020 National Action**
4 **Plan on Open Government**

5 MR. ISAAC:

6 Q At the time of your writing -- we'll go back to
7 the report, please, Madam Registrar.

8 At the time of your writing of this report,
9 you mentioned that at the time there were
10 13 countries that had made commitments in the
11 Open Government Partnership. Has that grown
12 since then? Is this a growing commitment
13 through the OGP?

14 A (MB) I'm not aware that there are any kind of
15 substantial number of additional countries have
16 made commitments. I think all those countries
17 continue to make commitment or try to strive
18 towards beneficial ownership, but I'm not aware
19 of a large number of increases. I am aware that
20 Open Ownership, Open Ownership and the EITI not
21 together with Open Government Partnership but
22 maybe using Open Government as a platform as
23 well have kind of developed some kind of close
24 relationship to try to advance beneficial
25 ownership transparency as well.

1 Q Thank you. If we go on into page 23 of your
2 report, there is a heading "1.1.8, Lesson
3 Learning on Beneficial Ownership Transparency."
4 I don't intend to take you through all of this,
5 but you describe here some of the momentum in
6 recording experience and good practice on
7 beneficial ownership transparency with reference
8 to various areas of ongoing research at the
9 time. And the top of page 24 there's a
10 reference to what was then a forthcoming report
11 from FATF on best practices. And, Mr. Barron, I
12 believe you may have made reference to this
13 earlier. Has that FATF report on best practices
14 since been published?

15 A (MB) It has. It was published in October last
16 year.

17 MR. ISAAC: Madam Registrar, if we could bring up
18 please the document at tab 9.

19 Q Is this the FATF report --

20 A (MB) It is, yes.

21 Q Would you please explain just briefly, I'm not
22 asking you to take us through the whole
23 document, just briefly what this report is and
24 what it addresses.

25 A (MB) Essentially the report is a survey kind of

1 based on FATF's evaluations and its interactions
2 with the member countries, both FATF and its
3 regional associates. It's a survey of best
4 practices and analysis of what best practices,
5 so it comes to the conclusion that -- so under
6 FATF recommendation 24, just to step back a bit,
7 there are three ways that are suggested that a
8 country can make beneficial ownership
9 information available. It can, as I said the
10 minimum is ask companies, demand that companies
11 record the information and make it available.
12 One is to set up a central register, but it
13 doesn't advocate a public register, it just says
14 a central register. And the third is to rely on
15 information already collected by banks,
16 professional advisors as part of their KYC and
17 customer due diligence. And this report
18 essentially comes to the conclusion that one
19 single -- implementing one of those on its own
20 is usually not sufficient to meet the standard
21 and to ensure an effective outcome and that it
22 advocates that two or more different methods are
23 used in order to make sure beneficial ownership
24 information is available to the standard
25 required, it's timely and accurate and current.

1 It also goes through the various separate
2 elements of recommendation 24 and illustrates
3 best practice with a series of examples from
4 various countries around the world that have
5 undergone FATF evaluations. Many of them it has
6 to be said are European EU member states,
7 although Switzerland, Indonesia and Hong Kong as
8 well as mainland China are also cited in some
9 cases as examples. The country that appears
10 most often, that is cited most often as an
11 example of best practice is Denmark.

12 Q Thank you. If we go to page 3 briefly of this
13 report. This is just the table of contents.
14 And you referred to a not just going with one
15 option, and I think there if you look at under
16 "The Suggested Effective System," there's a
17 heading that says the "Multi-Pronged Approach."
18 Do you see that? Is that what you're referring
19 to in terms of not putting all the eggs in one
20 basket but having a sort of an overlapping
21 system?

22 A (MB) Indeed, yeah. That's how they refer to it,
23 yeah.

24 Q Okay. Then under the "Suggested Key Features of
25 an Effective System," and I don't propose to go

1 through these specifically with you right now,
2 but there's a reference at the bottom to
3 "effective, proportionate and dissuasive
4 sanctions." Does the report go into the types
5 of sanctions and the ranges of sanctions that
6 some countries have implemented?

7 A (MB) It does give examples of sanctions regimes
8 indeed, what could be deemed an effective
9 sanctions regime. And it talks about things
10 like fines, the level of fines and through to
11 things like prison terms for kind of serious
12 offences. But the important point, and it's
13 kind of summarizing that heading, is about being
14 proportionate and dissuasive. They do act as a
15 deterrent to non-compliance.

16 MR. ISAAC: Thank you. I can't remember if I've
17 asked to mark this as an exhibit already,
18 Mr. Commissioner, but if we haven't I would ask
19 that we do that now, please.

20 THE COMMISSIONER: I think we did mark that.

21 THE REGISTRAR: We have not yet.

22 THE COMMISSIONER: Oh, I'm sorry. I'm getting behind
23 myself. 274 then.

24 THE REGISTRAR: Yes, exhibit 274.

25 **EXHIBIT 274: FATF Best Practices on Beneficial**

1 **Ownership for Legal Persons - October 2019**

2 MR. ISAAC: Madam Registrar, we can put that document
3 down, please. And return to the report.

4 Q So the next portion of your report that I'd like
5 to go to, we've looked now at the international
6 architecture and the key elements of that and
7 then some of the regional norms as well.
8 Beginning on page 24 of your report we go into
9 the bottom, the national architectures, and I
10 think you've described that there are several,
11 there were six countries that you looked at in
12 particular and you explained how those countries
13 were chosen. Those are Denmark, France, Ghana,
14 Nigeria, the UK and Ukraine. We can go just
15 through briefly. I'm not asking you to
16 summarize all of the features, but what are sort
17 of the key features of the Danish regime. You
18 mentioned that as one of the more effective
19 beneficial ownership regimes. What are its key
20 feature and what makes them effective?

21 A (MB) It's a public register. It's free to
22 access like the UK register. Denmark gets --
23 Denmark is cited in that best practice report,
24 it's cited more often than any other country.
25 They have a high level of compliance. I think

1 at the time of writing it was something like
2 96 percent. We talked -- as part of the
3 research we talked to Danish officials who were
4 involved in the process of implementing the
5 register. One of the challenges they faced was
6 overcoming kind of resistance, some resistance
7 from the business community based on there was
8 already quite considerable reporting
9 requirements in Denmark, as you would expect, in
10 terms of disclosure directives and other legal
11 ownership information. There was questions
12 about why you need this extra, this additional
13 information, so there was something of an
14 awareness raising campaign and communications
15 campaign in Denmark. They have also in the best
16 practice report, which obviously wasn't
17 available to us when we were writing the Denmark
18 case study because this was written before,
19 there's also -- they're cited as a best example
20 of things like risk assessment and also the way
21 they for example retired bearer shares from
22 their system. So they are seen as kind of one
23 of the leading countries in this area, if not
24 the leading country.

25 Q And what about are there other examples that

1 you've listed here that you think would be
2 helpful to describe some of the key features and
3 perhaps lessons that might be drawn from the
4 experience for our commission?

5 A (MB) If you maybe scroll down a couple of more
6 pages to probably -- just pause on France.
7 France had an interesting challenge. So the
8 government was taken to court in France over the
9 implementation of its beneficial ownership
10 registers actually more because of concerns
11 about their register of trusts rather than their
12 register for companies and legal persons. There
13 was concern -- and we may want to talk about
14 this later -- there was concern with the balance
15 between privacy and transparency in the French
16 system. But I wanted to kind of focus on Ghana
17 in part because Ghana probably since this report
18 has been published, Ghana has probably made the
19 most strides towards implementing beneficial
20 register. It has -- this is already referenced,
21 it has since amended or passed a new *Companies*
22 Act which included provisions for beneficial
23 ownership register and has since put in place
24 the implementing regulations for those
25 provisions and has started the process of

1 collecting data and is in the process of
2 implementing an IT system to do that. So it has
3 made quite a lot of progress, but it has faced
4 challenges, resources for a start, having a
5 registrar general which didn't necessarily have
6 the budget to do this and so it's received
7 technical assistance from the UK government.
8 But also it is an example of a country that
9 tried to lead toward the IT infrastructure maybe
10 a bit too quickly before it kind of had thought
11 through some of the policy implications and made
12 some policy decisions on what its register
13 should look like. It has gone beyond the FATF
14 requirements in some ways by introducing lower
15 sort of -- the recommended FATF threshold for
16 ownership is 25 percent. Ghana has introduced
17 lower thresholds than that but has also
18 differentiated between different types of
19 companies, so it has created kind of high risk
20 category in which is included the extractive
21 sector and the finance sector which are subject
22 to a lower threshold than the rest of the
23 economy, so companies outside those companies
24 deemed not high risk. There's also introduced a
25 zero threshold for PEPs. So in some ways is

1 pushing the boundaries and kind of setting a new
2 example in what could be deemed best practice in
3 this area.

4 Q When you say PEPs, Mr. Barron, what are you
5 referring to?

6 A (MB) Sorry, politically exposed persons. So
7 people who hold public office -- this might
8 be -- I don't know if this is good place to talk
9 just briefly about PEPs, but they're an
10 important part of beneficial ownership
11 transparency, and one of the drivers in many
12 countries, including Ghana, is to address or to
13 reduce the risk of conflicts of interest. So
14 making politically -- to kind of bring more
15 transparency to the business ownership of public
16 officials and those closely associated to public
17 officials and their close family, for example,
18 to avoid conflicts of interest in areas like
19 public procurement and try and reduce the risk
20 of corrupt and other unethical practices in
21 public life.

22 Q And how is that accomplished in relation to
23 beneficial ownership transparency? How are
24 those -- we've heard some evidence about
25 enhanced due diligence requirements when it

1 comes to politically exposed persons, but in the
2 context of beneficial ownership transparency,
3 how do those two worlds connects?

4 A (MB) So in the case of Ghana within their
5 definition of beneficial owner, who is a
6 beneficial owner, there is a definition of who
7 is a politically exposed person and there's --
8 so it's essentially anybody who holds a public
9 office above a certain rank. So politicians,
10 cabinet ministers, head of states, cabinet
11 ministers, senior civil servants, senior army
12 officers, senior judiciary, judges and judicial
13 figures and others above a certain rank, and
14 they're in Ghana's case subject to a lower
15 threshold. So if they have any ownership in a
16 company that has to be declared, so you know,
17 down to naught point -- a point of percentage,
18 and so in that case there's an enhanced
19 reporting regime for them.

20 Q Is that -- sorry go ahead, Mr. Barron.

21 A (MB) No, sorry, go ahead.

22 Q Is that an approach that Ghana has pioneered on
23 its own, or is that something that other
24 jurisdiction have implemented?

25 A (MB) We've seen in other jurisdictions, the

1 Ukraine also has a requirement for PEPs, but I
2 don't think -- by memory they're not subject to
3 any lower threshold, but they are required to --
4 they're defined within the beneficial ownership
5 definition. As part of our work in Azerbaijan,
6 Azerbaijan has a beneficial ownership registry.
7 We developed a definition for PEPs, both
8 domestic and foreign PEPs. In some countries
9 it's dealt different ways. So in the UK the
10 PSC, the beneficial ownership registry, the PSC
11 registry in the UK doesn't specifically
12 reference PEPs, but that's because there's
13 already existing systems in place, registered
14 members' interest for parliamentarians,
15 minister's code of conduct, and I presume Canada
16 has something, similar types of systems where
17 politicians, those in public life have to
18 declare their business interests.

19 Q Thank you. And --

20 A (TL) Just to add a little bit to that, sorry, on
21 the PEP piece is that PEP is also an area where
22 there are some significant areas of complexity
23 and potential pitfalls that can be fallen into
24 in designing those regimes. Without going into
25 lots of detail but for example, it is normal to

1 identify that a PEP is not just the person who
2 holds political office, but it is also their
3 close family. And then it becomes and
4 interesting discussion to be had and this is one
5 of those areas where you can get divergence
6 between different regimes is how you define
7 close family. And even more so if the
8 definition includes associates, so business
9 partners of people who are in a position of
10 political influence. So there are areas where
11 there can be what appear quite subtle nuances
12 but can have quite significant impacts on the
13 operation of a beneficial ownership regime
14 depending on how PEPs are defined. There is
15 another question which is around somebody who is
16 in position of political influence and then
17 stops being in a position of political
18 influence, or at least stops holding the
19 position formally which was what made them a
20 PEP, does that person remain a reportable PEP
21 for beneficial ownership purposes for some
22 period after that or possibly, you know, for the
23 rest of their life. So there are some kind of
24 fairly thorny and political questions that have
25 to be answered around designing that part of the

1 beneficial ownership regime.

2 Q Thank you. Moving on from Ghana, you mentioned
3 obviously the UK is a regime that as an early
4 adopter has received a lot of attention. Would
5 you perhaps identify what the key features from
6 the UK experience and what you think are the --
7 some of the lessons that might be drawn from the
8 UK's experience with beneficial ownership
9 transparency.

10 A (MB) Yeah, so UK was actually the first
11 operational public register of beneficial owners
12 anywhere. It was brought in under David
13 Cameron's government. They legislated it in
14 2014 or it actually came into being in 2016. In
15 the UK -- so in a lot of beneficial ownership
16 registers when you declare, you know, register
17 the ownership there is a threshold, say
18 25 percent, and then an owner says yeah, I own 26
19 or whatever, 45, or whatever percentage it is of
20 the ownership. The UK has actually taken a
21 slightly different tack and beneficial owners of
22 companies only have to declare their ownership
23 within the band. So the threshold is
24 25 percent, and then you have to indicate
25 whether you have between 25 and 50 percent, 50

1 to 75 or 75 percent and above. So it makes so
2 you cannot by looking at register see the exact
3 amount of ownership necessarily that somebody
4 holds in a company, and obviously if they
5 declare they own more than 75 percent of a
6 company, you don't know whether that's
7 76 percent or whether that's 100 percent. And
8 the bands are set essentially based on the
9 percentage of ownership or control that you need
10 to make certain decisions. So usually you need
11 a simple majority for most business decisions.
12 For some important business decisions, for
13 example change a company's constitution or so
14 forth, you would need more than 75 percent of
15 the ownership or control to do that. The UK
16 register has been criticized because it
17 doesn't contain -- it's basically self-reported
18 information. There is some verification; we
19 talked about reporting discrepancies earlier.
20 There are some other verification measures they
21 put in place, but it's still not seen as
22 completely reliable. So, for example, financial
23 regulators in the UK allow financial
24 institutions to use the registrar as a source
25 but not the source of beneficial ownership

1 information and they have to verify anything
2 they find in the register under their own
3 resources. The UK government is also
4 criticized, say well, it's all very well for
5 kind of mainland UK to do it, but what about the
6 overseas territories and Crown dependencies,
7 places like Jersey, Cayman Islands, BV Islands
8 and so forth which are seen as -- have a
9 reputation at least for being less transparent.
10 So the UK government has legislated for those
11 territories to introduce public registers by
12 2023, and they are also -- this is not in place
13 yet, but they are going to introduce a register
14 for the beneficial owners, foreign beneficial
15 owners of property of real estate in the UK
16 because that is seen as a gap and a potential
17 channel for money laundering, you know, buying
18 property, especially in the big cities, London
19 and so forth, to hide -- to launder proceeds of
20 crime.

21 MR. ISAAC: Thank you. Mr. Commissioner before we
22 move on to the next topic I think this may be a
23 convenient time to break, if that works.

24 THE COMMISSIONER: Yes, thank you, Mr. Isaac. We'll
25 take 15 minutes.

1 THE REGISTRAR: This hearing is adjourned for a
2 15-minute recess until 11:18 a.m. Please mute
3 your mic and turn off your video. Thank you.

4 **(WITNESSES STOOD DOWN)**

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

6 **(PROCEEDINGS RECONVENED AT 11:17 A.M.)**

7 **MICHAEL BARRON, a**

8 **witness for the**

9 **commission, recalled.**

10 **TIMOTHY LAW, a witness**

11 **for the commission,**

12 **recalled.**

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

15 THE COMMISSIONER: Thank you, Madam Registrar. Yes,
16 Mr. Isaac.

17 **EXAMINATION BY MR. ISAAC (continuing):**

18 Q Thank you. We left off looking at some of the
19 national architectures that you describe in your
20 report. If we go on to page 28 of the report,
21 please, there's a heading titled "How Approaches
22 Are Converging" and then over the next several
23 pages there are a series of tables. I'd just
24 like to take you through those, please. And the
25 first one describes areas of convergence, and

1 this is table 2A. Would you very briefly
2 describe what's shown in that table, please.

3 A (MB) Certainly. So the table obviously down the
4 left-hand side lists the countries that we used
5 as case studies. And it looks basically, first,
6 what's the scope of a beneficial ownership
7 registry. In this case "all" means across the
8 whole economy. So it's not related, it's not
9 just restricted to one particular sector; every
10 company in that country is subject to the
11 beneficial ownership regime. And then across
12 the top it's also how is the information
13 disclosed. So is it reported to a government
14 authority. Is it disclosed to authorized
15 agencies, so basically beneficial ownership
16 disclosure. Is the information publicly
17 available and is it free to access. And so the
18 green dots show yes, the red dots are a no and
19 the amber is whether it's a decision is pending.
20 In terms for example, in the case of France, at
21 the time the implementation of the beneficial
22 ownership registry had been put on hold subject
23 to this court case which had not quite -- or
24 rather the court case had finished, but the
25 government hadn't decided how to act as a result

1 threshold. As I mentioned earlier in
2 implementing its beneficial ownership registry
3 it's actually gone for higher thresholds but
4 below the 25 percent level. And Nigeria has
5 just legislated for beneficial ownership
6 register, and I think it's actually set its
7 ownership level at 10 percent, not 5 percent.
8 And EITI has a range because it suggests a range
9 and leaves it up to implementing countries to
10 set a threshold but encourages or suggests a
11 lower threshold for PEPs and up to 25 percent
12 for everybody else.

13 Q I'd like to explore some of these specific
14 policy choices and some of the competing
15 rationales and issues that are at play with
16 respect to each of them. Beginning with the
17 question of the threshold. What are the
18 competing rationales for establishing different
19 reporting thresholds and is there sort of a
20 consensus building around one particular
21 threshold or another?

22 A (MB) I would say the consensus at the moment is
23 25 percent, but there is a definite
24 international movement lower than 25 percent.
25 So as I said, Ghana and Nigeria have both

1 introduced lower thresholds. In the work that
2 we did in Azerbaijan we recommended a lower
3 threshold and they eventually agreed on I think
4 20 percent for that. And the idea is that even
5 25 or say 24 percent ownership of a company can
6 be substantial ownership interest and could
7 actually -- a number of 24 percent could
8 exercise significant influence over a company,
9 so there is I think a general movement towards
10 lower thresholds. But at the moment 25 percent
11 remains the international norm as much as there
12 is one.

13 Q You discussed some nuance around the threshold
14 with respect to politically exposed persons and
15 also briefly perhaps different standards or
16 different thresholds being applied to certain
17 types of companies or those engaged in
18 particular sectors of the economy or other sorts
19 of activities. Can you explain that a little
20 bit more and what has been emerging?

21 A (MB) So this is -- there is some thought, I mean
22 Ghana has taken up on this idea that certain
23 high risk companies in certain high risk sectors
24 where maybe there is a high risk of corruption
25 or money laundering or other illegal activity

1 should be subject to a lower threshold, say
2 10 percent because of the high risk nature you
3 need more information, more transparency on who
4 the owners are. Generally lower thresholds also
5 obviously prevent -- reduce the risk of
6 companies or owners structuring their companies
7 to kind of come in under the threshold. So for
8 example, a company where there were five
9 beneficial owners each holding 20 percent in a
10 country where there's a 25 percent threshold you
11 wouldn't know who any of those owners were, but
12 they may be acting in concert, but there may be
13 perfectly legitimate reasons for them to divide
14 up the ownership of the company that way. It's
15 a family-owned company and there are five family
16 members and so forth. So there are -- the idea
17 is that the lower the threshold there should
18 therefore be more transparency, more information
19 about who as many of the owners as possible are.
20 That obviously comes with a reporting burden and
21 then a compliance burden to some extent to the
22 lower threshold, the more information they have
23 to give because there may be more owners to
24 report on and therefore verifying all that
25 information and ensuring that information is

1 kept up to date.

2 Q Thank you. And you in the far right two columns
3 there's reference to exemptions. The first of
4 those is a stock exchange exemption. Can you
5 explain what that exemption is and what
6 rationale is cited for it?

7 A (MB) Sorry, you want in.

8 (TL) Sorry, were you going to talk about
9 something before the stock exchange.

10 (MB) I was going to say I think certainly my
11 thinking, I think Tim's thinking as well, we've
12 moved on from it's not quite correct to think of
13 these as exemptions. This is language that was
14 used at the time and was quite commonly referred
15 to as exemptions at the time, but our thinking
16 is actually exemption gives the wrong impression
17 or sends the wrong message that there's this
18 kind of some exemption from reporting. There's
19 no exemption from reporting. It's just a
20 different report regime because of the nature of
21 those companies. Sorry, Tim, I'll let you carry
22 on.

23 (TL) No, that's a very good point. Maybe
24 I'll talk a little bit about the stock exchange
25 reporting regime, but first of all why

1 stock exchange exemption but I think what we'd
2 call a stock exchange reporting regime, the idea
3 is that to the extent that a company is listed
4 on a recognized stock exchange, so we can talk a
5 bit about recognized stock exchanges in a
6 minute, but on a recognized stock exchange like
7 for example Vancouver, Toronto, London, New
8 York, rather than disclosing, trying to disclose
9 beneficial owners, that company would disclose
10 details of its stock exchange listing, so on
11 which exchange is it listed, linked to where
12 information could be found.

13 Now, the reason why that is seen as a
14 benefit is because stock exchanges like
15 Vancouver, Toronto, London, New York, have in
16 place their own governance procedures and their
17 own reporting requirements around the ownership
18 of companies that are listed on those stock
19 exchanges. So you are bringing into your
20 beneficial ownership register the benefits of
21 the reporting requirements of those stocks
22 exchanges where those companies are listed and
23 embedding that into your data set, if you like.

24 So there's -- that's the purpose of what's
25 described here as the stock exchange exemption

1 or the stock exchange reporting requirement
2 because actually it isn't an exemption, it's the
3 fact that absent this you may essentially get
4 nothing about these companies. What this does
5 is brings in something that they report.

6 Maybe Michael wants to talk a little bit
7 about some of the challenges around recognized
8 stock exchanges.

9 (MB) So the term "recognized stocks
10 exchange" appears in the regulations setting out
11 the UK register, and essentially reflects the
12 fact that not all stock exchanges are created
13 equal. Some have far better governance and
14 reporting regulations and listing regulations
15 and others. So, you know, Canadian, British,
16 European, US stock exchanges have a reputation
17 and do have strong governance around them,
18 strong transparency rules and so forth. So the
19 idea is that the governance regulation and
20 transparency requirements, the listing
21 regulations are such that you can take comfort
22 that they will give you the transparency of the
23 ownership and that you can rely on the
24 information they provide to verify the companies
25 who it says it is and acts at least to the

1 standards required by that stock exchange.

2 So in the UK regulation there is a schedule
3 which lists the stock exchanges throughout the
4 UK government has recognized as having those
5 standards and it's -- or the EU stock exchanges,
6 Canadian and US stock exchanges, Japan and so
7 forth, but there are some notable exceptions on
8 that list. The challenges to countries putting
9 this kind of reporting regime in for publicly
10 listed companies is who would you recognize as a
11 stock exchange. You may have to make some very
12 political decisions, especially if you are in a
13 region maybe where government standards in your
14 next door neighbour country are not as high as
15 you would like them, or the stock exchange is
16 not as well developed, is not as transparent as
17 you would like. Which of your -- there may be
18 major trading partners from other parts of the
19 world whose stock exchanges don't have the
20 governance requirements that you think are
21 appropriate. So you could have to make some
22 political decisions and there's no -- there's
23 very few kind of cutoffs or benchmarks to say,
24 you know, these stocks exchanges meet certain
25 minimum standards and these don't and therefore

1 you can include this group but not this group.
2 So there is an element of politics and judgment
3 that comes into how -- what stocks exchanges do
4 you recognize for this type of reporting
5 requirement.

6 Q Thank you. And the far right column refers to a
7 government exemption. Could you just briefly
8 explain what that's a reference to, please.

9 A (MB) This is a reference to government, so
10 companies that are state owned, it's owned
11 ultimately by a government. So, for example, a
12 state owned oil company. In which case again
13 there's no real -- you could argue the
14 beneficial owners are all the citizens of a
15 country and the government ultimately owns it.
16 So this is to give information on not so much
17 the natural persons who are the owners but the
18 government agency who owns the company or
19 government agencies that own the company and
20 because beneficial ownership is also about
21 control, who controls it, so who appoints
22 directors to a state-owned company to the board,
23 how is control exercised. So again you get some
24 information on nature of ownership of the
25 company and how control is exercised over that

1 company, but it would be a futile exercise to
2 try and list the beneficial owners or the
3 natural people who are beneficial owners of a
4 state-owned company.

5 Q Are there other types of entities, and I
6 appreciate you've added a bit of nuance in terms
7 of the stock exchange exemption not being so
8 much of an exemption, but are there other
9 questions in terms of the scope or what's
10 included or exempted for a beneficial ownership
11 transparency regime and what are your thoughts
12 on whether or not those are sensible exemptions
13 or scope decisions to make?

14 A (MB) So I think there's less nuance when it
15 comes to kind of beneficial ownership of legal
16 persons. It will depend on the -- different
17 countries have different forms of incorporations
18 of companies, but essentially any -- to use
19 Ghana for example, the Ghana scope is any
20 company that is subject to the *Companies Act*, so
21 that is essentially all corporations, legal
22 persons, legal entities, registered in Ghana
23 with the exception, and it's a fairly obvious
24 exception, sole traders, because by definition a
25 sole trader only has one owner and that's the

1 person who's trading. For example, but it may
2 be that there is the nuance may be in terms of
3 phasing, do you bring in, do you only apply this
4 to certain types of legal entities at the start
5 and then expand it. The UK did this. So
6 limited liability companies, most forms of
7 company incorporation were included when the
8 register was first set up, but there were some
9 exceptions. So Scottish limited partnerships,
10 Northern Ireland limited partnership and one or
11 two other forms of incorporation were initially
12 not within scope, but since then the scope has
13 been extended to include those because it's an
14 obvious loophole. If you want to avoid
15 disclosing your ownership, you set it up through
16 a Scottish limited partnership because you don't
17 then have to disclose the ownership. Except you
18 do now because they have been imported into
19 scope since the register has come into force.
20 So it is a question of avoiding loopholes and
21 ensuring that there's many different types of
22 corporate incorporations that exist under the
23 law of the country are included in the scope.

24 Q If we go on to page 30 of the report table 4
25 here lists the level of disclosure and exposed

1 persons and would you just briefly explain what
2 is illustrated please on this table.

3 A (MB) So this is showing the types of information
4 that each reporting regime requires to be
5 disclosed. So across the top we have various
6 different types, so for each beneficial owner
7 the name, date of birth, address, nationality,
8 their level of ownership, the effective date
9 when they required that ownership and some form
10 of ID number whether it's passport, national
11 identification card if such a thing exists in a
12 country and occupation. And it shows which
13 pieces of information are required by each
14 reporting regime. So notably the bottom FATF
15 requires very little information about each
16 beneficial owner, really only their name and the
17 level of ownership. Whereas other regimes, if
18 you take Denmark across the top requires almost
19 everything, apart from occupation. And this is
20 important in the sense it's not a question that
21 all of this information should then be publicly
22 available where the register is public, but this
23 information is required in order to -- really
24 it's part of the verification is part of use by
25 law enforcement or regulators to ensure that

1 each beneficial owner can be uniquely
2 identified, which hence the need for something
3 like an ID number, passport number, driving
4 licence number because you could have several
5 people with very similar or the same name, same
6 nationality and so forth. And also means that
7 where registers are searchable that a person, a
8 beneficial owner who owns interest in several
9 different companies, that can all be linked
10 together to show it's the same person who owns
11 these interests in all these companies. So it
12 is important that that kind of range of
13 information is captured.

14 Occupation is probably the least useful
15 because most a lot of beneficial owners will
16 list their occupation as company director. You
17 know, the title doesn't really tell you very
18 much. The information is sufficient to uniquely
19 identify somebody.

20 Q Is that one of the criticisms or issues that's
21 being raised with the UK regime since its
22 implementation is the absence of a unique
23 identifier?

24 A (MB) It is partly because it's difficult in the
25 UK because we don't have a national ID, a

1 national identification card system. But it
2 is -- but there is enough information on the
3 register to be able to identify somebody because
4 it includes things like date of birth and a
5 contact address. Not necessarily their
6 residential address, in fact not their
7 residential address, but some kind of contact
8 address, office address or similar and the date
9 of birth. That information is collected on the
10 UK register. You can't get people's residential
11 addresses and you can't get their full date of
12 birth, but you can get enough information to
13 show that one John Smith is different or is the
14 same as another John Smith, for example.

15 Q Thank you. If we go on the next table, it's the
16 last of the set of tables on page 31. Table 5
17 is verification and penalties. Don't
18 necessarily need to go through every one of
19 these, but just briefly explain what those
20 columns indicate, please.

21 A (MB) So the three columns, the first one --
22 sorry, the second column is whether there is a
23 central verification process and in most cases
24 there is not yet. And then the third column is
25 where does the onus lie or accuracy and in most

1 cases the onus is on the company to ensure
2 accuracy. So it's up to the company to ensure
3 that it reports or discloses reliable
4 information, up to date information on its
5 beneficial owners. And for example in the UK
6 system, UK companies are required on an annual
7 basis to reaffirm that the information in the
8 register remains current and up to date, and
9 there is also an onus on -- in many of these
10 regimes there is an onus on companies to report
11 changes within a certain time frame. In UK it's
12 14 days. In others it might be 28 days or
13 something similar. And the last column is
14 whether there are penalties, both a failure to
15 report and deliberate misreporting of
16 information, and Ghana and Nigeria cases, there
17 is a cross there because the regimes, the
18 legislation has not actually been passed yet.
19 More relying on their EITI systems, processes.
20 But in most cases at a country level there are
21 penalties for both failing to report and
22 deliberate misrepresentation or fraudulent
23 reporting.

24 Q And I think in the text below these tables you
25 indicate that you refer to the FATF standards

1 requiring sanctions to be dissuasive, effective
2 and proportionate and that there is convergence
3 on the need for sanctions but there is
4 divergence between countries in terms of what
5 those sanctions actually look like. Is that
6 accurate?

7 A (MB) That's accurate. So I think that's true
8 today. In some countries, Ukraine for example,
9 the penalties for failing to report are really
10 administrative. So they're on the scale of
11 failing to report any other corporate
12 information. And they are quite -- off the top
13 of my head I don't know the exact scale of them,
14 but they're not more than any kind of maybe a
15 few hundred, the equivalent of a few hundred
16 dollars. So for a company that -- you know, if
17 a beneficial owner of a company really wants to
18 avoid disclosing their ownership, it's not a
19 material amount -- you know, a material payment.
20 It's not a dissuasive payment. They're poor
21 administrative fines. In other countries
22 obviously the fines can escalate depending on
23 the seriousness of the offence. So repeatedly
24 misreporting or finding out, being discovered to
25 have been deliberately misrepresenting. In some

1 cases, not any of the countries listed here, but
2 in some cases countries have linked this to
3 other business processes. So for example in the
4 Kyrgyz Republic in central Asia as part of the
5 award of oil and gas and mining licences
6 companies have to disclose a beneficial
7 ownership, and if they fail, shown to be
8 misrepresenting, they can ultimately have their
9 licence taken away from them, which would
10 certainly concentrate minds at the boardroom, if
11 you risk losing your business licence or some
12 other. In the UK it can lead to disbarment of
13 directors and other sanctions. And there are --
14 there is an argument that misrepresenting --
15 deliberately misrepresenting a beneficial
16 ownership if you're doing it as part of another
17 crime, money laundering and so forth that, you
18 know, it could be interpreted as an aggravating
19 factor when it comes to imposing sanctions or
20 penalties.

21 (TL) I think those who support those low
22 administrative level of penalties for failure to
23 report beneficial ownership would suggest that
24 the reason is because there are punitive
25 sanctions for the money laundering or other

1 financial crime which it is actually hiding, and
2 so that's the point at which that penalty kicks
3 in. But as Michael has said, that doesn't
4 necessarily then act as a dissuasive factor to
5 hiding beneficial ownership. If anything it
6 actually means that that is the kind of smaller
7 price to pay.

8 Q And in terms of notwithstanding the vergence on
9 this issue of sanctions are there in your view
10 sort of best principles, not -- I'm not asking
11 necessarily the setting of specific amounts but
12 just broad principles in the way that an
13 effective sanctions system relating to
14 beneficial ownership should be structured?

15 A (MB) Yeah, I think it's probably around
16 escalating scale of sanctions. So for, you
17 know, reporting beneficial ownership slightly
18 late but reporting accurately, that is a kind of
19 an administrative, that's in the region, the
20 realm of administrative fines if there's
21 persistent failure to report or persistent
22 failure to respond to investigations and
23 discrepancies and so forth. I think there is a
24 strong argument for stronger fines or even other
25 penalties such as potentially imprisonment for

1 beneficial owners who are doing this
2 deliberately for reasons of fraud or other
3 crimes and linking it to the -- if you like the
4 other crimes that this is trying to -- this is
5 facilitating.

6 Q Thank you. I'd like to move on to the next
7 component of your report which begins on page 34
8 which is the benefits and impact of beneficial
9 ownership transparency. And the portion of this
10 report begins with a description of some of the
11 principle objectives that have been cited by
12 governments that have adopted beneficial
13 ownership transparency registers and then it
14 continues on with an assessment of the evidence
15 at least to date of what evidence there is of
16 whether or not those objectives are being
17 realized. You do note as this sort of a preface
18 to that examination on page 35 that I'm citing
19 here from the report:

20 "Stakeholders consulted concurred that it
21 is largely too early in the implementation
22 of beneficial ownership transparency to
23 measure its impact on most of these
24 hoped-for benefits on a systemic
25 comprehensive basis. There are only three

1 operational central publicly accessible
2 registers that have been established and
3 moreover beneficial ownership transparency
4 is only one element of systems to address
5 corruption or money laundering, for
6 example, which makes attribution more
7 challenging."

8 And then you go on notwithstanding those
9 challenges to look at least at the state of the
10 evidence. But is that limitation still the case
11 now? Would you agree that broadly speaking it
12 is still largely too early to measure the impact
13 of beneficial ownership transparency on a
14 systemic comprehensive basis?

15 A (MB) I think there is still not a huge evidence
16 base for that over encompassing many
17 jurisdictions or a long time period. It's
18 essentially four years since the UK register
19 came into force. Others are only just getting
20 started. And I think the more important bit
21 rather than that is that last bit of about
22 beneficial ownership is only one part of
23 combatting money laundering or corruption or
24 other illicit financial flows. There are
25 other -- and it's an important element and goes

1 in some cases to the heart of it in the sense
2 that, you know, trying to trace the real natural
3 people who are benefitting from such crimes.
4 But there are a lot of other elements in place
5 as, you know, you're finding out in the course
6 of this inquiry in terms of financial
7 structures, the financial systems, the checks
8 and balances within financial systems and other
9 factors. So yeah, there's still not a huge
10 evidence base yet.

11 Q So I would like to look at least at the evidence
12 that you were able to identify at this stage and
13 if there's been any updates that you're aware of
14 since, but the first of the -- I don't plan on
15 going through all of them. I know that the last
16 two of the potential objectives which are tax
17 evasion and counterterrorism, perhaps we'll
18 leave those for now, and I know that they
19 weren't the focus of your report either, but the
20 first potential benefit that you look at is
21 increased efficiency for law enforcement and
22 that's starting at the bottom of page 36. Would
23 you please describe what evidence there was at
24 the time of this report about whether or not law
25 enforcement were making use of beneficial

1 ownership transparency data?

2 A (MB) So Companies House themselves, the UK
3 corporate register, company register, talked
4 about how they were working more closely with
5 law enforcement. They also cited examples that
6 they had of kind of not just law enforcement in
7 the UK but other European police forces and
8 agencies because you can access the UK register
9 from anywhere in the world. As long as you have
10 an internet connection it's freely -- it's
11 available for free and accessible to anybody.
12 And so you could just go on and at least get
13 information that's in the register which
14 provides maybe -- it may not provide all the
15 answers but provides you with a route to follow
16 to trace the ownership of a particular company
17 or to make links with other companies or
18 individuals you're interested in.

19 We also spoke to the National Crime Agency
20 in the UK, which is the UK agency which has a
21 strong interest in this, and they also talked
22 about the importance of, you know, being able to
23 get information quickly and without --
24 efficiently without spending a lot of time or
25 money to acquire it. So that there's definite

1 advantages in terms of speed of -- in terms of
2 public registers, speed of access, and obviously
3 the benefit would be greater if that information
4 was reliable and verified. At the moment it
5 probably just provides further leads or clues on
6 which trails to follow.

7 Q There's also a reference here to other European
8 Union law enforcement accessing the UK's
9 registry. Could you explain that a little bit,
10 please for the Commissioner?

11 A (MB) this is just Companies House gave -- you
12 may just refer to this as kind of anecdotal
13 evidence that European police forces had told
14 them they access the register and they find it
15 useful because they can just quickly -- they
16 don't have to go through the formal process of
17 requesting information from their UK
18 counterparts; they can just go online and find
19 the information if they want if that's the
20 information that's publicly available. If they
21 want the information behind that to know more
22 about individuals they are investigating or of
23 interest, then they would have to go through the
24 formal channels. But it provides a speedy
25 resource of information at least as an initial

1 view of who might be the owners behind a
2 particular company.

3 Q And you mentioned in connection with your
4 interviews with law enforcement that they
5 emphasize the importance of accuracy of the
6 information or reliability. We'll touch on that
7 a little bit further when we look at the
8 potential measures for data verification.
9 Before we do that, I'd like to move to page 37
10 of your report. You write that:

11 "Beneficial ownership transparency has the
12 added benefit that third parties can
13 review publicly accessible data and assist
14 law enforcement and company registries in
15 identifying anomalies in the data."

16 Can you explain, please, what the potential role
17 of and benefits are from civil society having
18 access to publicly accessible beneficial
19 ownership data?

20 A (MB) So this goes back partly to the discrepancy
21 discussion we had earlier, but it's essentially
22 the many eyes concept that the more people
23 looking at the information, interrogating
24 information, using the information more likely
25 to discover discrepancies or patterns of

1 suspicious behaviour or uncover apparent
2 anomalies. And using information in their own
3 investigations, whether it's journalists
4 investigating particular companies or particular
5 individuals, civil society. And in the case of
6 the UK register Global Witness, which is a
7 campaigning civil society organization in this
8 space, produced a report. They essentially
9 downloaded all the data and analyzed it and
10 found anomalies, some of them anomalies such as
11 companies claiming they were listed and
12 therefore subject to the listed company
13 proportion requirement where they clearly were
14 not a listed company or listed on the stock
15 exchange, through to maybe deemed more serious
16 examples of apparent misrepresentation of the
17 facts or patterns of ownership, lots of
18 companies being formed by the same company
19 formation agency, they're using the same address
20 as a service address. But actually their report
21 by memory should actually -- these anomalies
22 probably only accounted for about 1 percent of
23 the total information in the register, so helped
24 to at least suggest that there was a reasonable
25 degree of accuracy of the information at that

1 time.

2 Q Mr. Barron, you are aware that the BC government
3 recently undertook a public consultation on the
4 potential implementation of a beneficial
5 ownership registry here; is that right?

6 A (MB) I am, yes. In fact Tim and I made a joint
7 submission to that public consultation.

8 MR. ISAAC: Okay. Madam Registrar if we could bring
9 up the document at tab 7, please.

10 Q And this document is a briefing document that
11 summarizes some of the consultations that were
12 received in connection with that consultation,
13 and I'd like to take you if we could go please
14 to page 3 of this document. There is a -- I'm
15 looking under the heading of "Public Access and
16 Privacy." This is a summary of some of the
17 submissions and positions that were taken.

18 There's a statement that says:

19 "Most submissions from stakeholder groups
20 did not support giving the public access
21 to the transparency register. They argue
22 that once all the information is in the
23 hands of government, the government is in
24 the best position to analyze the data.

25 The general public will not be able to add

1 much to this analysis which requires
2 complex computer software and expertise."

3 And I just want to pause there and ask whether
4 or not based on what you've seen and the
5 potential role of civil society is that borne
6 out that it's only the government that has the
7 ability to make meaningful use of the data?

8 A (MB) I think the Global Witness report I just
9 referred to kind of at least appears to
10 contradict that. I mean, they were able to
11 undertake a reasonable analysis of all the data.
12 And in this day and age with computing power
13 available to even kind of upper High Street and
14 software and expertise in terms of algorithms
15 and so forth, I think it's no longer just in the
16 purview of government to be able to kind of
17 analyze big data and to make sense of it. And
18 it may not be necessarily you need to analyze
19 the whole data. It may just be subsets of the
20 data. You may be looking at a particular sector
21 or a particular group of companies or a
22 particular group of individuals. But even so if
23 you even wanted to -- and the UK registry is
24 large. It's nearly 4 million companies and if
25 you assume an average of -- I think there's an

1 average of two owners per company, it starts --
2 the amount of different pieces of information
3 becomes quite large quite quickly. So I think
4 yeah, I don't think it's just -- no longer just
5 within the purview of governments to be able to
6 analyze those sorts of large data sets.

7 MR. ISAAC: Thank you. Madam Registrar, if we could
8 mark that please as the next exhibit.

9 THE COMMISSIONER: 274.

10 THE REGISTRAR: 275, Mr. Commissioner.

11 THE COMMISSIONER: Thank you.

12 **EXHIBIT 275: Ministry of Finance Briefing**
13 **Document - Company Beneficial Ownership**
14 **Consultation - Summary - May 26, 2020**

15 MR. ISAAC:

16 Q And you did mention that you had made a
17 submission in connection with that. I don't
18 intend to take you through that but, Madam
19 Registrar, if we could bring up document 2432,
20 please. And scroll down to the next page. Is
21 this the submission that you made in connection
22 with the BC consultation?

23 A (MB) It is, yes.

24 (TL) Yes, it is.

25 MR. ISAAC: If we could mark as -- I believe it's

1 exhibit 276.

2 THE COMMISSIONER: Very well.

3 THE REGISTRAR: Exhibit 276.

4 **EXHIBIT 276: Response to BC Government's**
5 **Consultation on a Public Beneficial Ownership**
6 **Registry - from Michael Barron - April 29, 2020**

7 MR. ISAAC: Thank you. We can bring that document
8 down.

9 Q And I don't intend to take you through this
10 either in detail, but you did refer to a Global
11 Witness report and I think there are several
12 documents that were connected to the work that
13 Global Witness did with that. But if we could
14 bring up, please, the document that's at tab 5.
15 This is one the reports that you referenced in
16 terms of the work of Global Witness to analyze
17 the data?

18 A (MB) It is.

19 MR. ISAAC: Thank you. If we could mark that,
20 please. I think that would be exhibit 277.

21 THE COMMISSIONER: Yes.

22 THE REGISTRAR: Exhibit 277.

23 **EXHIBIT 277: Global Witness - Learning the**
24 **lessons from the UK's public beneficial**
25 **ownership register - October 2017**

1 MR. ISAAC: We can bring that down and we can,
2 please, go back to your report.

3 Q So if we go down point to the page 38, please.
4 There's another heading here addressing the
5 potential benefits of a beneficial ownership
6 transparency. It's "More Efficient Due
7 Diligence Processes For Regulated Entities
8 Leading to Reduced Costs." Could you just
9 briefly describe what the potential benefit is
10 here and the state of indicators whether or not
11 this benefit is being realized through the
12 registries that are functioning now?

13 A (MB) So the situation at the moment is banks are
14 the regulated entities, obviously have to
15 conduct KYC inquiries, you know, they're taking
16 on new clients or new transactions and they
17 spend time and money to undertake those due
18 diligence inquiries on their clients. A public
19 register of beneficial owners which is reliable
20 and verified will provide a valuable resource,
21 and we spoke to companies in -- for example, we
22 spoke to one of the -- a major UK bank and they
23 were very clear that a central public register
24 with verified information would improve the
25 efficiency of KYC and due diligence almost

1 beyond recognition. And it's not just regulated
2 entities. I mean, all the companies throughout
3 the economy conduct due diligence on their
4 suppliers or their business partners, especially
5 when they're going to new ventures and so forth.
6 I know from personal experience -- as I said, I
7 worked for a while for Control Risks Group which
8 provides services in this area. When I was at
9 BG Group I was on the other end kind of
10 commissioning due diligence when we were looking
11 at new partners in various parts of the world.
12 And to due diligence on one company you can end
13 up spending the equivalent of tens of thousands
14 of dollars to do that. So you do that each time
15 that can ramp up considerable amount of
16 expenditure for one transaction.

17 So it seems to be clear that there is a
18 public register with verified information would
19 provide a huge benefit to companies needing to
20 do customer due diligence.

21 Q And again, Mr. Barron, you've mentioned verified
22 information, and I think that is something that
23 is identified as well in the report here
24 similarly with the discussion under the benefit
25 to law enforcement of the importance of that

1 information being accurate. And I think you
2 indicated in the UK that currently entities are
3 not permitted to rely only on the beneficial
4 ownership registry; is that correct?

5 A (MB) That's correct, yeah.

6 Q And is that -- there's a comment at the top of
7 page 39 that because entities cannot rely solely
8 on the information it's difficult to assess or
9 isolate the extent of any cost savings. Is that
10 fair?

11 A (MB) I think that's fair. I think that's fair
12 at the moment, yes. But I think the cost
13 savings are considerable given, you know, that
14 you can spend -- a company in the course of a
15 year could spend quite a large amount of money
16 undertaking due diligence on its customers and
17 clients.

18 (TL) I think there's also a point there that
19 even if it isn't a cost savings it's a
20 refocusing of effort in that due diligence is
21 not just about understanding beneficial owners;
22 it's about understanding who the beneficial
23 owners are and then the resulting investigation
24 into the activities, backgrounds, et cetera, of
25 those individuals who have been identified. So

1 what a verified register of beneficial owners
2 would do is allow the focus to be on that second
3 part of the process rather than the
4 investigative first part of the process. So
5 it's also about refocusing effort.

6 Q Thank you. The next potential benefit that is
7 addressed in your report, and this is on
8 page 39, is the increases transparency that
9 improves the business environment and benefits
10 economic growth. Now, I understand this may be
11 an area where you've conducted further research
12 since the time of this report, so perhaps I'll
13 just ask you to briefly describe for the
14 Commissioner what this potential benefit relates
15 to and what the research described here but also
16 your more recent work has indicated in that
17 regard, please.

18 A (MB) So this is essentially about part of the
19 public good that a beneficial ownership register
20 can bring. While beneficial ownership
21 transparency has benefits for anti-money
22 laundering and so forth it also have benefits in
23 terms of improving integrity of the business
24 environment in building trust. So if there's a
25 public register, companies can use that register

1 to understand who they are really doing business
2 with, who really owns their suppliers, their
3 business partners, their contractors, their
4 competitors. For example, in open public
5 procurement processes they can understand or
6 investigate whether there are any apparent
7 conflicts of interest with the companies
8 competing in tenders. So private sector --
9 well, companies themselves are an important user
10 of beneficial ownership information. It's not
11 just law enforcement or government regulators or
12 so forth. The business community itself is an
13 important user of beneficial ownership
14 information, and there is some evidence for
15 this. Again, Companies House in the UK has
16 published research that shows one of their
17 biggest user groups is smaller and medium-sized
18 enterprises, smaller and medium-sized companies
19 who consult the beneficial ownership register,
20 this very purpose, to find out their clients
21 are, because smaller, medium-sized companies
22 don't have the budgets and the time to
23 commission third party due diligence from
24 specialist providers. They need to -- the
25 public registry provides a valuable resource for

1 them at least to do a first part of who these
2 people are and who the owners of these
3 businesses are and to identify any red flags or
4 any areas that might require a bit of further
5 investigation, and again to come back to Tim's
6 point about focusing effort and making sure if
7 they do need to investigate further the
8 ownership of the supplier they focus on the high
9 risk rather than just everybody.

10 And you're right, so DFID after they read
11 our report they picked up on this element and
12 the kind of benefits to the business of
13 beneficial ownership and asked us to do a
14 followup piece of work which looked at the
15 private sector in particular as a user of
16 beneficial ownership and its potential advocate
17 of beneficial ownership information and where
18 some of the challenges may lie.

19 Obviously the private sector is a huge -- it
20 covers everything from the smallest company
21 through to the largest corporation, firm and
22 every sector across the economy. So we tried to
23 divide it up into different categories, but
24 essentially the outcome of that research can be
25 summarized as private sector is an important

1 user. There are definite benefits to them from
2 using beneficial ownership information across
3 sectors, across sizes of companies. That
4 doesn't really matter. There are some companies
5 in some situations which have a very strong
6 interest in advocating the beneficial ownership
7 transparency either because they're in high risk
8 sectors or they're doing a lot of business in
9 jurisdictions which are not as transparent as
10 they'd like to be, you know, businesses
11 overseas, but there are also challenges and
12 those challenges are around kind of lack of
13 understanding of beneficial ownership, what
14 actually is the concept. There's still some
15 confusion in lots of people's mind between legal
16 ownership and beneficial ownership and what
17 benefits, what they can use the information for.
18 There's also concern about whether information
19 in the beneficial ownership registry could be
20 misused by unscrupulous public officials and
21 that takes different forms or manifests itself
22 in different ways in different countries. And
23 there is some concern about the impact on
24 privacy and personal security as well.

25 Q That leads directly into the next topic I did

1 want to address which is the issue of privacy.
2 And also the mechanisms that some jurisdictions
3 have used to mitigate concerns around privacy,
4 and there is some reference to this in the
5 report both at page 46 as well as in a
6 subsequent section of the report. But stepping
7 just back from the specific portions in the
8 report, what are the principle privacy concerns
9 that have been raised in connection with
10 publicly accessible beneficial ownership
11 registers?

12 A (MB) I think the main concern is it may put
13 information into the public domain which
14 obviously reveals more details a person's
15 business interests and may make them more
16 vulnerable, put them at greater risk of threat
17 to their personal security, whether it is
18 identity theft or kidnap or, you know, threats
19 against their family or anything like that. In
20 some other cases, in some countries there's a
21 concern that information essentially gives an
22 unscrupulous government a roadmap to
23 expropriating assets maybe from business leaders
24 who have a different political view or, you
25 know, oppose them in some way. And some of

1 those concerns, especially the personal security
2 one, are real and genuine and have to be
3 addressed. I would say that in many cases a
4 beneficial ownership registry will not put a --
5 so there's a difference between the
6 information -- as we've said, the difference
7 between the information collected and the
8 information published. So some personal
9 information may be collected to be used by law
10 enforcement but won't be published, so
11 residential address, maybe full details of
12 birth, not the full identity, not the identity
13 number and so forth, but also especially in this
14 day and age in the limited amount of information
15 that a beneficial ownership registry would put
16 in the public domain does it necessarily
17 increase the risk given that the amount of
18 information that may already be available out
19 there in the public domain through social media
20 feeds, through press reporting, through other
21 kind of publicly available sources of
22 information. Safeguards can be put in place.
23 UK register and others have mechanisms for
24 individuals requesting redaction of all their
25 information from the register under certain very

1 tightly drawn criteria. So if an individual can
2 demonstrate that there is a real threat to their
3 personal safety because of information that is
4 put out in the register, and that may be because
5 they own a company that is perfectly legal and
6 carries out perfect legitimate business
7 activities but might create quite a strong
8 emotional response or be very controversial.
9 The usual example is companies involved in
10 testing products on animals, for example, or
11 companies involved in the defence sector. And
12 so the owners of those companies may not be high
13 profile or well known for their wealth, and
14 putting that information out there may attract
15 threats to their personal security from animal
16 rights activists or other -- or just criminal
17 intent as well.

18 Q Thank you. The other aspect that's referred to
19 here under some of the concerns is one of
20 reporting burden. And if you could address what
21 the nature of that concern is and whether or not
22 there are mechanisms to minimize reporting
23 burden.

24 A (MB) So a lot of companies often say well, this
25 is a reporting burden; we need to report more

1 information, you know, this is additional
2 reporting that we need to do. And in the case
3 of a register that is not public, so in a case
4 of a central register where there's a
5 requirement for companies to disclose their
6 information to a corporate register or to some
7 government agency and that information is
8 retained only for use by law enforcement and
9 other competent authorities, yes, there is a
10 reporting burden and no benefit to the company.
11 No direct benefit to the company. But even in
12 that case reporting burden is -- should be
13 fairly small. This is not a huge amount of
14 information. This is not like financial
15 statements or annual accounts or anything like
16 that. It's a fairly limited amount of
17 information which does change occasionally but
18 possibly not too frequently. In the case of a
19 public register, there's still that same
20 reporting requirement, but the company itself
21 has a direct benefit back to it which far
22 outweighs the reporting burden and that then has
23 access to everybody else's information and can
24 use that information, as I said, to understand
25 who it's really doing business with, understand

1 its suppliers and business partners. And so
2 that is where -- in those cases the reporting,
3 the fairly modest reporting burden is far
4 outweighed by the public good and the benefit a
5 company can draw from having access to that
6 information.

7 (TL) I think just to add something there, I
8 think it's something that we've learned from our
9 engagement with stakeholders on this subject is
10 that that balance of cost benefits, if you like,
11 is not well understood by lots in the private
12 sector businesses at the moment. And there are
13 a few reasons for that. Michael has already
14 talked about the lack of understanding of what
15 beneficial ownership transparency really means,
16 but I think one of the key reasons why there
17 isn't that understanding is partly to do with
18 the way that large businesses operate in that
19 the individuals, the departments within a large
20 business where due diligence is being undertaken
21 and reliable public information about beneficial
22 ownership information would be really
23 interesting and useful in terms of the
24 day-to-day running of the business may well be
25 very separate from those who engage in public

1 policy debates on behalf of the business and are
2 looking at and maybe see this as being more of a
3 compliance burden and a reporting requirement
4 rather than actually a useful business tool. So
5 some of the conversations that we've had with
6 businesses both as part of developing this
7 report and the subsequent work that we did and
8 also other work that we've done on beneficial
9 ownership in other jurisdictions, you almost get
10 this kind of dawning of realization sometimes
11 with private sector stakeholders that actually
12 they had not really thought about the other side
13 of beneficial ownership disclosure and
14 transparency. They had only really been
15 thinking about it as being a burden and how do
16 we mitigate that burden, rather than the
17 opportunity that it's afforded.

18 So I think there's -- and that may be borne
19 out by some of the responses to the public
20 consultation that we saw earlier about not
21 understanding the business use case and thinking
22 that actually the use case of this information
23 is big data analysis, which that isn't the only
24 use case for this. There's also the small data
25 analysis and the use of this information by

1 businesses for a good commercial reason.

2 Q Thank you. If we go to page 50 of your report,
3 I don't intend to take you through all of this,
4 but there's a portion that describes here what
5 is described as the implementation journey and
6 if we go down to page 52 a description of sort
7 of the key stages of establishing a registry.
8 And just looking at the bottom there and the
9 bottom of this table says "ensuring accuracy."
10 That's something that has come up several times
11 in discussing both the challenges that early
12 adopters are grappling with now as well as the
13 importance of accuracy for the purposes of the
14 benefits that you had described in the report,
15 and I'd like to look at the importance of
16 accuracy as well as some of the measures that
17 some early adopters have taken to seek to
18 achieve better accuracy in the data.

19 If we go to page 59, please of the report.
20 There's a heading here "Ensuring the Data is
21 Accurate and Reliable, Including Verification."
22 And you describe here that countries at the
23 vanguard of implementation such as UK and
24 Denmark are now focusing on honing their systems
25 of verification to enhance reliability. So what

1 is the -- you describe several concepts in here,
2 but the importance of accuracy and verification
3 in the context of beneficial ownership
4 transparencies and how have some jurisdictions
5 sought to hone their system to achieve better
6 accuracy?

7 A (MB) So as we say in the report and I still
8 think it's true, verification, you know,
9 ensuring its accuracy and reliability is the
10 biggest challenge and that's because A, we're
11 talking about large data sets which are changing
12 so every time any of those bits of information
13 changes whether they change their level of
14 ownership or they sell the company or companies
15 buy each other, that information will change.
16 The other thing is the other element of this
17 which makes verification difficult is there's
18 not a single source you can use to verify all
19 the information. So if you're thinking of
20 somebody's name, their date of birth, their
21 address, their level of ownership in a company,
22 maybe their passports or identification cards,
23 there's not a single source you can go to and
24 say ah yes, that verifies all the information
25 you would need. A passport, maybe. Maybe birth

1 certificate, some proof of address, some
2 documentation accompanied, share certificate or
3 whatever, to show ownership. So there's
4 various, there's no one source for information
5 and it's changing all the time.

6 And there's lots of companies, different
7 organizations trying to do this at the same time
8 and there are various stages or layers to this
9 verification. There's the initial data input,
10 making sure that the data is accurate when it's
11 first put in, simple things, names are spelled
12 right, the information, you know, dates are
13 right. When a person gives their date of birth
14 they don't say they were born in 2020, there
15 were born whenever. The information is the
16 right type and in the right range. And it's
17 more difficult than you thought. The UK when it
18 first set up the register, these fields for a
19 person to put in their nationality was a free
20 form field so you could just type in your
21 nationality. As a result the UK register had
22 500 different ways of people describing their
23 British nationality. That included misspellings
24 of the word "British," it include Great Britain,
25 United Kingdom, English, Scottish, Welsh, Manx,

1 Cornish, whatever. But somebody counted 500
2 different ways to describe yourself as British.
3 So that's an easy fix. You just have a
4 drop-down menu and people click on the right
5 nationality. There are challenges around
6 foreign names, and especially names that are
7 written or transliterated from a non-Latin
8 alphabet, Arabic or Russian or Chinese or what
9 have you. So there's a basic data entry thing.
10 Then there's making sure the information is
11 accurate, that the person is John Smith or Joan
12 Smith or whoever they claim to be and verifying
13 that they do hold X percentage in their company.
14 And also verifying that the person who is -- so
15 quite often this is somebody in a company -- so
16 it's not each individual business owner
17 submitting their information. It's a company
18 doing it on behalf of its ultimate beneficial
19 owners. So somebody in the company is collating
20 this information and submitting it. Do they
21 have the authority to do that? Are they who
22 they say they are? Do they really represent the
23 company? And then keeping up to date, it's
24 accurate, making sure that when ownership
25 changes or when some piece of information

1 changes it is reported, you know, it is changed
2 within the time allotted by the regulations. So
3 there are lots of different layers. And then
4 there's checking that business owners are
5 entitled to be business owners, that they're are
6 not on list of disbarred directors, they're not
7 on sanctions list, either national sanctions
8 list or international sanctions list. There
9 are -- and this comes into other methods, so are
10 there any red flags. Circular ownership of
11 companies, so company or person company A owns
12 company B which owns company A, which is
13 actually outlawed in quite a few jurisdictions
14 now. But checking, and you know, red flags
15 caused by overly complex corporate structures in
16 a situation where you wouldn't expect it, and
17 then things like spot checks or sampling, you
18 know, 1 in 10 entries just as a further
19 verification.

20 So there are various layers and there is
21 quite a large toolkit of measures that you can
22 take to ensure the accuracy of information at
23 these various stages or these various levels.

24 Q Mr. Barron, you used the term "layers." I think
25 earlier on you were looking at the FATF best

1 practices guide, the term "multi-pronged
2 approach." Do I take it you are saying it's not
3 a one silver bullet, it's a combination of all
4 of these elements working together?

5 A (MB) Absolutely, it's a combination of most, if
6 not all, of these elements to ensure, and so
7 there is a resource implication for that as well
8 in terms of time and money to ensure the
9 information, and the other part going back to
10 sanctions is enforcement, so, you know, when
11 discrepancies are found or when a company fails
12 to provide its data ensuring that's followed up
13 and enforced. So that's another important part
14 of verification.

15 Q And if we look at page 61 of your report
16 briefly, there's a -- the list actually begins
17 at the very bottom of the preceding page, but
18 there's a list of some of the specific -- a
19 non-exhaustive list but a list of some of the
20 specific stages of data verification; is that
21 right?

22 A (MB) That's right, yes. I emphasize it is
23 non-exhaustive, it's not everything, but it's
24 just some examples.

25 Q What role, and this is one of the questions that

1 emerged in the public consultation as well as in
2 various other policy debates around this. But
3 what role do you believe government should play
4 in the verification and what are some of the
5 best practices around that?

6 A (MB) I think best practices is government should
7 play quite an active role. Partly obviously the
8 way it designs the system in the first place and
9 the kind of basic checks and balances it puts
10 into to make sure data is entered accurately and
11 so forth. Verifying the details, so demanding
12 documentary evidence to back up the information,
13 and then the screening and the cross-checks with
14 other databases, sanctions lists and so forth,
15 and then I suppose it's possibly its most
16 important role is enforcement, is investigating
17 any discrepancies, investigating any suspicious
18 patterns of ownership, enforcing compliance with
19 the system, making sure people do report on
20 time. There's followup to any late reporting
21 that any examples, particularly, you know,
22 serious non-compliance, fraudulent
23 misrepresentation, et cetera is investigated and
24 prosecuted.

25 Q Is there a risk of having a beneficial ownership

1 registry with inaccurate data more so than just
2 having no registry at all?

3 A (MB) I think there's a big risk since if it's
4 inaccurate. And people may become too
5 complacent if they rely on it and it's
6 inaccurate, it becomes very easy for people to,
7 to use a bit of a colloquialism, game the
8 system, and just put in information that they
9 want people to see rather than the information
10 that people should be able to see.

11 (TL) There's also a danger that it
12 discredits the system in terms of building and
13 maintaining political will and also extending
14 that, going back to the purpose of this report,
15 towards a global norm of beneficial ownership
16 transparency, having limitations in the quality
17 of data in registers, it acts as a challenge
18 when then trying to promote implementing a
19 similar register in other jurisdictions. So I
20 think there is a risk associated there, but I
21 think it's part of the path that we're on at the
22 moment in what is still a very new and
23 developing area where best practice in areas
24 such as verification is still developing and
25 what works and what doesn't work so well is

1 still being discovered in some cases by trial
2 and error, and seeing how data with can be
3 improved through that mixture of better designed
4 inputting controls and then the testing of that
5 data once it's in the system. But all of those
6 also need to sit within the specific context of
7 the jurisdiction in which that regime is being
8 implemented. So a suite of verification
9 techniques that are appropriate for one
10 jurisdiction may not be appropriate in another
11 jurisdiction or may need supplementing in some
12 ways to address shortcomings elsewhere in
13 possibly a corporate registry where reliance
14 could be placed on the corporate registry as
15 part of a verification process maybe if there is
16 an existing very reliable and well-governed
17 system. Where there isn't then you may need
18 additional measures in order to plug that gap, I
19 suppose, in existing shortcomings in governance
20 around corporate transparency.

21 Q Thank you.

22 A (MB) The ultimate risk from an inaccurate
23 register is essentially undermining trust in the
24 business environment and the integrity of the
25 business environment. I think that is

1 ultimately where the risk lies.

2 Q Thank you. Appreciating we've covered a lot of
3 ground this morning and talked about a number of
4 specific issues and broader issues as well, are
5 there any areas that we haven't covered or any
6 other sort of key takeaways that you might leave
7 our commission with in terms of how potentially
8 to implement an effective beneficial ownership
9 transparency regime?

10 A (MB) Thank you, yes. I think I would say there
11 are three main takeaways, main kind of if you
12 like lessons learned or recommendations. The
13 first is around this idea of ensuring the design
14 of the beneficial ownership registry is robust
15 and strong from the start, so that's ensuring
16 that whoever is implementing the registry,
17 there's a corporate register or some other
18 government agency has a clear strategy plan and
19 roadmap before they get to the legislation,
20 before they get to the legislative phase,
21 because this is a complex area. As we've
22 discussed there are lots of nuances and a lot of
23 these issues, the definition, the mechanisms,
24 verification are interlinked and decisions made
25 in one area will impact what decisions you want

1 to make in another area. So I think having
2 clear strategy and roadmap is an essential, is a
3 lesson learned.

4 The other, the second key takeaway for me is
5 the real importance of public consultation with
6 all stakeholders and especially the private
7 sector because at the end of the day it's the
8 private sector who provide the basic input into
9 this which is the information on their
10 beneficial ownerships, and as we've just said
11 there is still a lot of misunderstanding even in
12 companies and in jurisdictions where this is --
13 you know, these issues are being quite well
14 aired and discussed a lot. So there is a need
15 for consultation throughout the process from the
16 very earliest stages right through the
17 legislative process, both the formal
18 consultation process such as the one the
19 Government of British Columbia has undertaken,
20 but also a more informal consultation with
21 private sector, with civil society, with other
22 parts of the government because there are other
23 government stakeholders in this whether it's the
24 ministry of finance, whether it's law
25 enforcement, whether it's the department of

1 commerce or the government agency that looks
2 after business interest and so forth. So
3 consultation and communication about why
4 beneficial ownership transparency is important,
5 the benefits that all these different
6 stakeholders and players can gain from it.

7 And then the third element, the third
8 takeaway is around the systems and resources
9 needed to implement this and ensuring sufficient
10 and appropriate resources are put in at all the
11 key stages to ensure that it happens and that
12 it's implemented in an effective manner, but at
13 the right stage and, say, not jumping straight
14 to the IT system or straight to the legislation
15 but doing it in a measured and systematic way.
16 Tim, I don't know if you want to add anything to
17 that if I've missed anything.

18 (TL) No, I'm sure it will come as no
19 surprise that Michael and I had a conversation
20 about these three takeaways earlier. I suppose
21 the caution note that I would sort of overarch
22 all of that is that there are areas of
23 complexity in this topic which are frequently
24 hiding behind what may seem to be the simplest
25 of decisions and it's important to really delve

1 into those topics and make those strategic
2 decisions early on as Michael has said and avoid
3 some of the pitfalls that we've seen in other
4 jurisdictions or that we've seen, you know, the
5 potential for, things as simple as potentially
6 conflicting legislation and issues like that
7 where it's important to have sort of considered
8 and given that due attention at the right stage
9 in the process, but I think Michael's key point
10 about sequencing is the key takeaway.

11 MR. ISAAC: Thank you. Mr. Commissioner, those are
12 all of my questions for these witnesses.

13 THE COMMISSIONER: Thank you, Mr. Isaac. I think
14 Ms. Rajotte for the province has been allocated
15 ten minutes.

16 MS. RAJOTTE: Thank you, Mr. Commissioner. We have
17 no questions for these witnesses.

18 THE COMMISSIONER: Thank you, Ms. Rajotte.
19 Ms. George on behalf of the Law Society of
20 British Columbia who has also been allocated
21 ten minutes.

22 MS. GEORGE: Thank you, Mr. Commissioner, we also
23 have no questions for these witnesses.

24 THE COMMISSIONER: Thank you. Ms. Tweedie on behalf
25 of the British Columbia Civil Liberties

1 Association has an allocated 20 minutes.

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

3 **EXAMINATION BY MS. TWEEDIE:**

4 Q And many of my questions as well have also been
5 helpfully canvassed and answered during
6 Mr. Isaac's examination, so I don't expect to
7 take the whole 20 minutes but there are a few
8 areas that I would like to ask you about,
9 Mr. Barron and Mr. Law.

10 So to begin, in the UK system one can only
11 apply for an exemption when they can provide
12 evidence of a serious risk of violence or
13 intimidation; is that correct?

14 A (MB) That's right, yes. Under the UK register
15 you have to apply specifically it's -- the
16 criteria are very tightly drawn and in fact the
17 regulations around the exemptions and redactions
18 to the register are longer than the regulation
19 to actually implement the register in the first
20 place. And you have to show a real threat to
21 your personal safety backed up by evidence,
22 police reports. Maybe if we are talking about
23 in the realm of testing products on animals,
24 whether some activist or some organization has
25 made a direct threat to you. So, yes, it is

1 Q And for those who are denied, for those whose
2 application exemptions are denied, do they have
3 no option but to have their information become
4 public or I suppose other interest --

5 A (MB) I am pretty sure there is a right of
6 appeal. I'm not too sure who you appeal to, but
7 I'm sure there is a right of appeal and
8 ultimately you could also take this, you can ask
9 for -- you can take it to court and ask for a
10 judicial or a legal review of the decision. You
11 could also lobby through your local member of
12 parliament and so forth, so there are avenues
13 available if your initial application is denied.

14 Q And would information remain private during this
15 process of attempting to perhaps pursue a
16 judicial review or to lobby?

17 A (MB) That I don't know. I don't know that level
18 of detail I am afraid.

19 Q Okay. So BC has been exploring beneficial
20 ownership both in terms of corporate
21 transparency and also in real estate. And one
22 exception that often comes up in the real estate
23 context in homeownership would be, for example,
24 survivors of domestic violence who don't want
25 their former abusers to be able to access any

1 information about them. So for these people
2 even knowing that their information is part of a
3 public registry would be enough to induce great
4 fear but they may not have evidence of a risk of
5 harm so such as a police report. So in such a
6 scenario in the UK system absent evidence of a
7 serious risk of violence or intimidation, this
8 type of person would likely not have their
9 exemption granted; is that fair to say?

10 A (MB) Well, just a point on residential
11 addresses. Residential addresses are not
12 included in the UK register. So you have to --
13 as a business owner you have to provide to the
14 Companies House, you have to provide your
15 residential address, but that's not part of the
16 information that's publicly available. So the
17 only address for a person that's publicly
18 available is the registered business address,
19 the registered address for that business. So
20 only in circumstances where that registered
21 address for the business is their residential
22 address would be public, so you may make an
23 argument for redacting that address, but
24 residential addresses are not made public in the
25 beneficial ownership register as a matter of

1 course. And the UK is going to introduce a
2 register of owners of real estate, but it's
3 foreign owners of real estate, the ultimate
4 beneficial owners, not everybody. And in any
5 case registry of property is treated separate in
6 the UK. There's a land register which contains
7 details of at least the legal owners of real
8 estate and property. And that is publicly
9 accessible but for a fee; it's behind a pay
10 wall. That system I'm less familiar with. I
11 don't know what the redaction policy or
12 procedures are for that at the land register.

13 Q Thank you. But to confirm, though, the
14 information that goes into the beneficial
15 ownership registry regardless of whether it
16 includes a residential address or not, and I
17 understand that it doesn't, a person would have
18 to show a risk of violence or harm before being
19 able to apply to redact anything; is that
20 correct?

21 A (MB) That's my understanding, yes.

22 Q Okay. So I'd like to move on to penalties and
23 sanctions. Providing inaccurate information
24 would constitute a failure to comply, and I'm
25 speaking about the UK again with the PSC rules,

1 and that's a criminal offence which could result
2 in a fine or a prison sentence of up to
3 two years; is that correct?

4 A (MB) Yes, I believe so, yeah.

5 Q And providing inaccurate information it could
6 result from a paperwork error or a
7 misunderstanding of the law's terms. That's
8 correct?

9 A (MB) It could be, yes. If somebody doesn't
10 understand the nature of the -- but I think my
11 understanding is any penalty would be judged
12 given all the circumstances of the case and how
13 serious the case were, and it has to be said
14 there have been prosecutions for non-compliance
15 with this regime in the UK, but there haven't
16 been very many of them. Again I'm not sure the
17 number, but it is a low number of cases and it's
18 only kind of fairly serious cases where there
19 has also been there's been deliberate -- in
20 court it's proven there was deliberate attempt
21 to mislead or to act fraudulently in some way.
22 But there haven't been that many cases. And one
23 of the criticisms -- about the time we were
24 writing this report one of the criticisms of the
25 Companies House is they hadn't prosecuted

1 anybody despite people like Global Witness
2 pointing out some obvious, or at least seemingly
3 obvious, examples of non-compliance.

4 Q Okay. That's actually -- speaking of Global
5 Witness, I have a question regarding, so the
6 data dive that they conducted into the PSC
7 register is an example of a civil society
8 organization utilizing this information to
9 obtain information, and outside of this example
10 of the Global Witness data dive can you provide
11 me with a picture of what type of evidence
12 members of the public, whether it's civil
13 society organizations or other, are playing in
14 policing these registers and in reporting errors
15 and inaccuracies.

16 A (MB) Yeah, so I know other civil society
17 organizations have reported discrepancies. For
18 example I'm aware of one where a mining company,
19 the information of their ownership on their
20 website and the information on their ownership
21 in the PSC register were different, and quite
22 materially different, and so a civil society
23 organization reported this to the Companies
24 House and Companies House investigated and asked
25 the question of the mining company why is it

1 different. I can't remember the exact -- I
2 mean, the information is -- I think the
3 information in the registry, in the end the
4 information in the PSC registry was correct.
5 They just hadn't updated their website or
6 something like that. It wasn't a serious
7 infraction in that sense. But it showed the
8 system works. Companies House contacted the
9 mining company, they provided an explanation,
10 the discrepancy was resolved. And I think that
11 was one of many kind of instances of a civil
12 society organization reporting discrepancies.

13 As far as I'm aware Companies House haven't
14 published any data on number of discrepancies
15 reported and resolved. They may well do. Early
16 in the new year it will be a year since the
17 mandatory reporting of discrepancies came in, so
18 sometime next year they may well start
19 publishing data on the number of discrepancies
20 reported, et cetera.

21 Q Okay. Thank you. So the example you just cited
22 with the mining company, am I to understand that
23 they reported a perceived discrepancy, the
24 registry looked into it and then they
25 subsequently found that in fact it was not

1 incorrect information?

2 A (MB) That's my understanding of what happened in
3 that situation, yeah.

4 Q So this is an example of a third party
5 submitting information on inaccuracies or errors
6 but that in itself can also be inaccurate; that
7 is correct?

8 A (MB) They were going on the information
9 available to them. There was an apparent
10 discrepancy in the information.

11 (TL) I guess the reality is that they
12 reported the discrepancy and there was a
13 discrepancy. It's just that it was the website
14 that was wrong, not the PSC register.

15 Q Okay.

16 A (MB) There's also been -- I've also noted
17 there's some cases -- so not every case will you
18 find the beneficial owners of a company because
19 they might not have any owners that reach the
20 25 percent threshold, for example, and I do know
21 of cases where a company said, we have no
22 reportable beneficial owners, and civil society
23 organizations have challenged that reported to
24 Companies House saying, but we think they do
25 have a beneficial owner who is above the

1 25 percent threshold. I think some of those
2 cases, again they're investigated and it may --
3 I don't know the outcomes, but the information,
4 the company would be asked to correct the
5 information within the registry.

6 Q Okay. Thank you. So I just have one final
7 question and perhaps it's outside your
8 knowledge, but I will pose it to you regardless.
9 In the Open Ownership and Global Witness report
10 that was previously marked as an exhibit it
11 stated that one of the ways to improve the
12 accuracy of data would be cross-checking data
13 with other government data sets. Are you able
14 to give me examples of what agencies and
15 departments might share data sets amongst them
16 to verify beneficial ownership information?

17 A (TL) I would say, I mean, generically then, you
18 know, first of all a beneficial ownership
19 register one assumes is bolted on to an existing
20 corporate registry. If it isn't, if it is a
21 standalone beneficial ownership register, then
22 there is obviously a cross-checking then to a
23 corporate registry that may have other
24 information in it and checking that that tallies
25 across. Beyond that there are other government

1 agencies that will have information on lists of
2 companies and lists of individuals whether that
3 is tax authorities or other agencies that have
4 registration information about business
5 activities. So within a -- within the confines
6 of government, that could be potentially any
7 source of data within government about the
8 status and nature of businesses or about
9 individuals. But I think that would be part of
10 the -- one of those targeted verification
11 processes which Michael was talking about
12 earlier where as part of a suite of tools that
13 you use in order to improve the quality of data,
14 you identify what are the checks and balances,
15 if you like, that can be carried out by
16 government on the data that is being received
17 and identifying discrepancies in one form of
18 reporting against another form of reporting
19 would be where that would happen. It's not
20 necessarily, you know, that is not saying that
21 you have merged together two reporting
22 processes. It's actually a process of
23 verification between the two. Sorry, Michael,
24 were you going to say something as well?

25 (MB) No, I think I've finished.

1 MS. TWEEDIE: Okay. Thank you both very much.

2 Mr. Commissioner, those are all my questions for
3 these witnesses.

4 THE COMMISSIONER: Thank you, Ms. Tweedie. Mr. Gratl
5 on behalf of Transparency International
6 Coalition who has been allocated 20 minutes.
7 Mr. Gratl.

8 MR. GRATL: Thank you, Mr. Commissioner.

9 **EXAMINATION BY MR. GRATL:**

10 Q Mr. Barron, other entities like trusts and
11 partnerships can equally be used for money
12 laundering, terrorist financing and corruption;
13 is that right?

14 A (MB) It is, and as I said in the UK system
15 partnerships are in scope for the PSC register
16 and as I think Tim mentioned earlier, the EU
17 anti-money laundering directive also requires EU
18 member states to set up a register of the
19 beneficial ownership of trusts.

20 Q Okay. And neither of those systems exist in
21 Canada?

22 A (MB) I understand not, no.

23 Q Are you of the view that in order for a
24 corporate beneficial ownership registry to be
25 effective other similar entities where the true

1 ownership can be hidden like trusts and
2 partnership ought also to be registered?

3 A (MB) Yes, I think there's all those types of
4 industries need have some sort of registration,
5 the question is whether it's made public, and in
6 the case of trusts that's a very -- there is
7 another layer of complexity for that because
8 trusts are used not just by corporates and not
9 just for corporates for commercial purposes but
10 trusts are used for wide range of purposes
11 including protecting the interest of children,
12 vulnerable adults and for a whole variety of
13 reason, and therefore there's a greater degree
14 of complexity in kind of registering those and
15 more risks and implications for making that
16 information public.

17 (TL) I think just to add to that as well, I
18 think it's also important to consider what you
19 mean by effective. Because there are, as we've
20 already sort of discussed, a wide range of
21 benefits of having a public register of
22 beneficial ownership. One of those is tackling
23 corruption and money laundering and illicit
24 financial flows, but there are all sorts of
25 other aspects as well where even a register

1 MR. GRATL:

2 Q I'll just turn my video off. A beneficial trust
3 registry doesn't really have privacy interests
4 that are different than the privacy interests
5 that are involved in corporate registries.
6 Corporate shares can be owned by minors?

7 A (MB) They could but also trusts, you know,
8 trusts can be used for all kinds of different
9 purposes and it may be that some forms of trust,
10 beneficial ownership of some forms of trust can
11 be put in the public domain. For example, I
12 don't know if this applies in Canada, but in the
13 UK, the UK government has encouraged a scheme
14 for employee ownership of companies and that
15 employee ownership of a company is often
16 exercised through a trust or a trust is set up
17 for the employees to conduct their ownership of
18 the company, and as a trust it's not subject to
19 the beneficial ownership transparency
20 requirements, and so you in theory you could
21 have a situation where the trust 75 percent or
22 more is owned by one -- benefits one person and
23 all the rest of the employees have the rest of
24 the 25 percents, and therefore we don't get the
25 transparency of who holds influence. That's a

1 theoretical scenario. I'm not saying that
2 that's happened in practice. But there are
3 examples in the UK of companies who you trace
4 their ultimate beneficial ownership back to an
5 employee -- a trust set up for the benefit of
6 the employees of the employees of that company.

7 Q Can the beneficial ownership registry for
8 corporations not just be circumvented by placing
9 the ownership of shares, then, in trust if
10 there's no trust registry or beneficial trust
11 registry?

12 A (MB) In any of these systems somebody with
13 enough time and brain power and enough criminal
14 intent will find ways, you know, however many
15 loopholes you try to close will find ways if
16 they are really determined. You know, a
17 determined actor will find ways to circumvent
18 even the best designed system. But yeah, trusts
19 are a particularly knotty issue in this topic.

20 (TL) And I think that's the point is and why
21 trusts looking at the European, the EU example,
22 why trusts were introduced as part of the fifth
23 EU anti-money laundering directive and the
24 introduction, the requirement there was not for
25 a public register but for a register to exist

1 and be available to law enforcement. Part of
2 the reason for that is that it is in what is
3 already a complicated and difficult subject and
4 one where it is still -- we are still at the
5 early stages of implementation globally of
6 beneficial ownership registers, trusts probably
7 sit at the difficult end of that spectrum, and
8 so I think whether or not ultimately registers
9 of beneficial ownership of trusts public
10 registers will be where that journey leads,
11 possibly. Whether that is actually one of the
12 thornier and more difficulty areas to address
13 undoubtedly. So I think some of the difference
14 in paths for transparency and beneficial
15 ownership of corporates and of trusts at the
16 moment is probably actually the fruit of that
17 difficulty rather than an underlying feeling
18 that corporates are the place that corruption
19 and money laundering happens and trusts aren't,
20 which I don't think is the thought process. I
21 think it's more just that trusts are a more
22 challenging topic and so are probably running on
23 a different path.

24 Q Trusts are an ancient scheme. They have a
25 longer lineage than corporations and in Canada

1 at least and in civil law jurisdictions trusts
2 are a time honoured technique for avoidance of
3 taxes going back to the medieval era.

4 A (TL) I wasn't suggesting that trusts are a newer
5 concept than corporate entities, but there are
6 complexities which Michael has addressed some of
7 around disclosing beneficial ownership of trusts
8 which at the moment have not been addressed and
9 are therefore in general trusts are not as far
10 down the road as transparency in corporate
11 beneficial ownership is.

12 Q May I ask what those complexities are that are
13 different? I'm not asking you to go into minute
14 detail, but just in broad strokes what are the
15 complexities? I mean, I'm just having
16 difficulty understanding, I suppose, what the
17 barrier is to implementing a trust beneficial
18 trust registry?

19 A (TL) I mean, I think part of the complexity is
20 that the sheer variation in -- apologies for the
21 terrible pun there, but the sheer variation in
22 trusts that there is, the number of different
23 trusts structures that there can be and
24 potentially the difference in what that would
25 mean for a reporting requirement. I think there

1 are also, as Michael has already said, some
2 concerns about what information would that
3 potentially put into the public domain, what are
4 the potential consequences of that information
5 being in the public domain and the fact that
6 those are issues that need to be addressed
7 before a public register of trusts can be put in
8 place because you can't put the genie back into
9 the bottle. So it's how do you -- the path the
10 EU has chosen to take is clearly a phased
11 approach where the first focus was on
12 transparency and beneficial ownership of
13 corporates as we saw in the fourth anti-money
14 laundering directive, and then a step forward
15 with the trusts being introduced in the fifth
16 anti-money laundering directive together with
17 other enhancements to the corporate transparency
18 agenda. So I think there's a clear direction of
19 travel. As a personal opinion, I wouldn't say
20 that the fact that at the moment registers of
21 transparency of ultimate beneficial ownership of
22 trusts are few and far between, if existent at
23 all, is not a sign of where the end game is
24 going to be. I think it's just a sign of where
25 we are on the journey.

1 Q In terms of corporate ownership of corporate
2 shares do you see an advantage to requiring
3 nested or deep disclosure of beneficial
4 interests so that if a corporation owns a
5 shareholding it would in turn be required to
6 disclose its beneficial holdings even if it were
7 a foreign corporation?

8 A (MB) That is essentially the underlying
9 principal of a beneficial ownership registry.
10 So if you have company A is owned by say
11 companies B and C, beneficial ownership registry
12 should look through that structure to see who
13 are the ultimate real people sitting at the top
14 of the tree. Whether they are still in the same
15 jurisdiction, Canada, British Columbia, UK or
16 wherever, or whether they are overseas. So you
17 can do that. In the UK, to use maybe a kind of
18 example, you go into the UK register, you type
19 in "Donald Trump," you will get all the
20 companies, UK incorporated companies that Donald
21 Trump was director of or owner of until he
22 became president. You put in Donald Trump
23 Junior you get all the UK registered companies
24 that Donald Trump Junior, his son, is still a
25 beneficial owner of in the UK. And, you know,

1 it's a bit of a party game, if you like, you can
2 play. You can put in a famous person into the
3 UK register and see if they own any companies,
4 whether they are British, American, Canadian,
5 whatever nationality. So a good robust register
6 should look through that corporate structure
7 wherever the companies are registered to find
8 the ultimate real people at the top.

9 Q Now, the same would hold for partnerships; is
10 that right?

11 A (MB) Yes. Because it's in the UK system
12 partnerships are within scope.

13 Q And is there a partnership registry in Canada
14 that ought to be included to your knowledge?

15 A (MB) Not to my knowledge, no, but I would say if
16 Canada or if really any province, whether it's
17 British Columbia, introduced a beneficial
18 ownership register for corporates or for legal
19 persons, partnerships I would expect to be in
20 scope for that.

21 Q All right. So just so I understand, for the
22 beneficial ownership registry in the United
23 Kingdom if a trust is interposed as an ownership
24 of a threshold amount of shares, there's no
25 getting behind that?

1 A (MB) At the moment the way it's structured you
2 can't see through that, no. So I have come
3 across examples -- it tends to be employee-owned
4 companies and there's usually a description of
5 what the trust is for and typically it's
6 employee ownership, but you can't see how many
7 employees are in that trust, whether they all
8 own the company equally or whether there's
9 different proportions of ownership.

10 Q In Canada where, say, the Irving family or the
11 Aquilini family tend to organization their
12 affairs by way of family trusts wouldn't that
13 type of ownership defeat the entire purpose of a
14 corporate registry at least where it comes to
15 accountability for the wealthiest Canadians?

16 A (MB) It may do, but on the other hand if they
17 are that high profile their ownership of
18 companies is probably already known in the
19 public domain anyway. The exact details may not
20 be known, but that would be something as each
21 province introduces -- let's stick with
22 British Columbia. As British Columbia goes
23 through the process of designing a beneficial
24 ownership registry, it will have to address some
25 of these issues on how it's going to -- what the

1 scope is going to be and how it's going to
2 address some of these issues and what the
3 overall purpose of the register is, what the key
4 drives are and what it wants to achieve at the
5 end of it.

6 Q All right. So then, I mean, in the Aquilini's
7 case know, the trust structure of the family is
8 not transparent. You'll find out about that
9 sort of thing in legal cases, for example the
10 federal court case taking to judicial review
11 that determination of capital gains payable on
12 certain properties sold by the Aquilini Group to
13 buy the Vancouver Canucks hockey team. So you
14 can get a peek at it, but there's nothing like a
15 trust registry. In terms of ownership of -- so
16 a beneficial shareholders registry shows the --
17 who owns at least large chunks of corporations,
18 but it wouldn't show anything about what
19 corporations own then, would it?

20 A (MB) no, That would be more like an asset
21 register. It would only -- it may show if they
22 own other companies and looking through that
23 structure to see the ultimate beneficial
24 ownership, but it wouldn't necessarily -- it's
25 about the beneficial owners of corporates. It's

1 not in a sense an asset register of what a
2 company owns in terms of assets.

3 Q All right. Would a beneficial ownership
4 shareholder ownership registry require, say,
5 persons domiciled in Canada, citizens or
6 permanent residents to disclose their
7 shareholdings if their shareholdings reached a
8 certain threshold of foreign corporations?

9 A (TL) That would depend on where the foreign
10 corporation is. So the register -- in general
11 registers are driven by the companies that are
12 incorporated in the country which is creating
13 the register. So it is the ultimate beneficial
14 owners of -- in the case of let's say
15 British Columbia, it would be the ultimate
16 beneficial owners of companies registered in
17 British Columbia. People living in
18 British Columbia with interests in companies
19 elsewhere around the world, it would depend on
20 whether those companies are and whether those
21 countries have public registers of beneficial
22 ownership in which that person's interest would
23 appear. But it might also depend whether they
24 may ultimately have, you know, interests around
25 the world, but then do they have maybe a local

1 vehicle through which they own them, so there
2 you would get some transparency. But no it
3 doesn't work the other way around in terms of --
4 so taking Michael's example, you're typing
5 "Donald Trump Junior" into the UK register to
6 see the interests that are registered for him on
7 the UK register, rather than the other way round
8 typing in a UK resident and finding out their
9 interests all around world.

10 Now, ultimately if we end up in a world
11 where there is a global norm of beneficial
12 ownership transparency, as per the title of the
13 report we've been referring to today, and those
14 registers are interoperable and talk to each
15 other, then ultimately you may end up in a
16 position where you can find that information out
17 and you can look for an individual in one
18 country and find out through a network of
19 beneficial ownership registers in multiple
20 jurisdictions what their interests are in
21 businesses around the world. But that's a long
22 way down the road from where we are at the
23 moment and it is not the objective of an
24 individual country's beneficial ownership
25 register.

1 Q Would there be any benefit domestically to
2 prohibiting asset ownership or transactions with
3 jurisdictions that do not require transparency
4 in beneficial ownership?

5 A (MB) I think that would be -- so I know
6 Transparency International maybe but other civil
7 society organizations have suggested that
8 companies avoid transactions using jurisdictions
9 that are seen as not transparent. The issue
10 with that is enforcement and how you would
11 define non-transparent because you have some
12 jurisdictions which may not have a reputation
13 for being transparent but which will say they
14 have a very effective beneficial ownership
15 register, it's just not public. But if law
16 enforcement comes to them and says who owns
17 company X, they can produce verified information
18 on the owners of that company at a click of a
19 few keystrokes. So it would depend on from
20 whose point of view you are talking about. For
21 law enforcement around the world because of
22 processes in place and the OECD and others and
23 exchange of the notes and international
24 treaties, law enforcement in most countries the
25 transparency of company ownership is much more

1 for them than it is for us, you know, outside of
2 law enforcement. Law enforcement almost
3 anywhere can get the information they want on
4 who owns a company. It may take some time.
5 They may have to go through a formal process to
6 request it from the British Columbia government
7 or the Alberta government or the United States
8 federal government say, but it is available to
9 them. It could be more efficient, as we've
10 talked about, it could be quicker. So I think
11 enforcement and defining transparency and how
12 transparency is not black and white, it is a
13 spectrum, it would be a very difficult
14 enforcement. You have would different countries
15 come up with different interpretations and
16 everybody claiming they're more transparent than
17 the country next door.

18 Q Mr. Law, do you agree with that?

19 A (TL) Yeah, and I think that's borne out by if
20 you look at some of the work that's been done by
21 the European Union to identify its list of
22 non-cooperative tax jurisdictions which was
23 based on a number of criteria. Now,
24 transparency and beneficial ownership wasn't one
25 of those. It focused much more on the OECD work

1 and things like automatic exchange of
2 information and common reporting standard and
3 those sorts of initiatives as being signed up
4 to. But the objective of that was to come up
5 with a list of jurisdictions and then
6 potentially have some sanction or penalty or
7 restriction placed upon those jurisdictions, but
8 actually that in itself became a particularly
9 challenging piece of work to keep moving forward
10 because of different interests of different
11 parties. So I think it's very difficult to
12 define correctly and then create that kind of
13 almost sanctions regime and I think in a world
14 where at the moment there are -- well, at the
15 time that our report was produced there were
16 three countries in the world with effective
17 public beneficial ownership registers. There
18 are 27 EU member states, but not all of those
19 fully have yet fully implemented public
20 registers of beneficial ownership and there are
21 a number of very large economic powers around
22 the world that are a lot further away from
23 introducing a public register of beneficial
24 ownership. I think it would be difficult to
25 debar people from doing business with anybody or

1 having business interests in any of those
2 jurisdictions that don't have a public register
3 of beneficial ownership at least until there is
4 a more than critical mass of countries that meet
5 that criteria. I think at the moment that would
6 basically be saying that people can only do
7 business in the UK, Denmark, Ukraine and some EU
8 member states.

9 MR. GRATL: Thank you. Those are my questions for
10 the witnesses. Thank you, Mr. Commissioner.

11 THE COMMISSIONER: Thank you, Mr. Gratl. Anything
12 arising from that, Ms. Tweedie?

13 MS. TWEEDIE: Nothing arising. Thank you.

14 THE COMMISSIONER: Mr. Isaac?

15 MR. ISAAC: Nothing arising, Mr. Commissioner.

16 Mr. Commissioner: All right. Thank you. I take it
17 that is the evidence for today, Mr. Isaac and
18 Mr. Martland?

19 MR. ISAAC: It is.

20 THE COMMISSIONER: Thank you. We will adjourn, then,
21 until Monday morning at 9:30. I just wanted to
22 check, Mr. Martland, we do have a day coming up
23 when we're sitting different hours. Is that
24 next Friday?

25 MR. MARTLAND: Yes, Mr. Commissioner. I'll just

1 double-check. I think it's an early start on
2 Friday of next week which I think is an 8:30
3 start to accommodate a witness who is out of the
4 country.

5 THE REGISTRAR: That is correct, Mr. Martland.

6 MR. MARTLAND: That will be little solace to the two
7 witnesses out of the country here today, but in
8 any event.

9 THE COMMISSIONER: We are very grateful to them for
10 giving up their Friday evening for our benefit.

11 Thank you both.

12 THE WITNESS: (MB) Thank you for the opportunity.

13 THE COMMISSIONER: You are excused from further
14 testimony, of course, and we will now adjourn
15 until Monday morning at 9:30.

16 THE WITNESS: (TL) Thank you very much.

17 THE WITNESS: (MB) Thank you very much.

18 THE REGISTRAR: The hearing is now adjourned until
19 November 30th, 2020 at 9:30 a.m. Thank you.

20 **(WITNESSES EXCUSED)**

21 **(PROCEEDINGS ADJOURNED AT 1:23 P.M. TO NOVEMBER 30, 2020)**

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