

**PROCEEDINGS AT HEARING
OF
NOVEMBER 30, 2020**

COMMISSIONER AUSTIN F. CULLEN

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November 30, 2020

(Via Videoconference)

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

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

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. Martland, do you or Mr. Isaac have conduct of this panel?

MR. MARTLAND: Yes, Mr. Commissioner. I have conduct of today's panel, and we are dealing with the topic of beneficial ownership transparency, or BOT, and in particular the concept of a BOT registry. You'll see on screen four members of our panel. We're very happy to have them joining us today. So I have alphabetically James Cohen, Peter Dent, Mora Johnson and Chris Taggart. And as the first item of business, Madam Registrar, I believe Ms. Johnson is being sworn; the other witnesses will affirm.

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

THE WITNESS: (JC) Full legal name is Richard James

1 Cohen. Legal name is spelled -- or last name is
2 spelled C-o-h-e-n.

3 THE REGISTRAR: Thank you. And Mr. Dent.

4 THE WITNESS: (PD) Peter Albert Dent. Last name
5 D-e-n-t.

6 THE REGISTRAR: Ms. Johnson.

7 THE WITNESS: (MJ) Legal name is Mora Patricia
8 Johnson, and my last name is spelled
9 J-o-h-n-s-o-n.

10 THE REGISTRAR: Thank you. And Mr. Taggart.

11 THE WITNESS: (CT) Chris[indiscernible] Taggart.
12 Last name spelled T-a-g-g-a-r-t.

13 **MORA JOHNSON, a witness**
14 **called for the**
15 **commission, sworn.**

16 **JAMES COHEN, a witness**
17 **called for the**
18 **commission, affirmed.**

19 **PETER DENT, a witness**
20 **called for the**
21 **commission, affirmed.**

22 **CHRISTOPHER TAGGART, a**
23 **witness called for the**
24 **commission, affirmed.**

25 THE COMMISSIONER: Yes, Mr. Martland.

1 MR. MARTLAND: Thank you, Mr. Commissioner. What I'll
2 do is in a brief manner lead through the
3 background and CVs of the four experts joining
4 us today and then work through a series of
5 questions that builds the concept of the BOT
6 registry and in so doing I'll be introducing a
7 number of documents that have been listed and
8 identified to the participants. I'll begin --
9 I'll do this alphabetically by last name.

10 **EXAMINATION BY MR. MARTLAND:**

11 Q So, Mr. Cohen -- and I'll package this up, if
12 you will, in a somewhat unwieldy leading
13 question. Sir, you're the Executive Director of
14 Transparency International Canada, a group
15 that's part of the TI coalition, a participant
16 in our commission, and, by way of background, a
17 graduate of the University of Ottawa as well as
18 the Graduate Institute of International
19 Development Studies in Geneva, Switzerland. Is
20 that true?

21 A (CT) That is true.

22 Q You have worked internationally, including a
23 period of four years with the Geneva Centre for
24 Democratic Control of Armed Forces, with
25 Transparency International UK, with Adam Smit

Mora Johnson (for the commission)
James Cohen (for the commission)
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1 International, with the African Centre for
2 Justice and Peace studies, United States
3 Institute of Peace and then since 2016 with
4 Transparency International or TI Canada.

5 A (CT) That's true.

6 Q And so work that's seen you variously spending
7 time in Kampala and London and Toronto and
8 Ottawa among other places?

9 A (CT) That's true.

10 Q You're an expert in anti-corruption
11 accountability and transparency, the author of a
12 number of reports in those areas, and in your
13 present role involved in managing teams and
14 programs as well as report research and writing
15 and training and presentations for various
16 diverse organizations and people?

17 A (CT) That's true.

18 Q Mr. Dent, I'll turn to you, please. You are a
19 partner with Deloitte Forensic, and I believe
20 your title is the Managing Partner, Financial
21 Advisory, BC Region with Deloitte?

22 A (PD) That's correct.

23 Q You are presently based in Vancouver, I think
24 more recently -- most recently before that
25 Toronto, but you've worked really around the

1 world, and my note is over 35 countries in total
2 that you've worked in, as well as with the
3 United Nations and the World Bank Group?

4 A (PD) Yes, that's accurate.

5 Q You have over 20 years experience working with
6 clients conducting internal investigations and
7 providing advice on anti-fraud and
8 anti-corruption compliance frameworks in order
9 to enhance accountability, transparency and
10 governance?

11 A (PD) That is correct.

12 Q And you also have served in the past as the
13 chair of TI Canada and also as a faculty member
14 of the Directors Education Program at the Rotman
15 School of Management at the University of
16 Toronto?

17 A (PD) Yes, that's correct.

18 Q And taking us back even further, you have worked
19 on retainer for the RCMP commercial crime unit
20 and at an earlier point were a constable with
21 the York Regional Police Service in Ontario?

22 A (PD) Yes, that's correct.

23 Q Ms. Johnson, I'll turn to you, please. The --
24 by way of your background, you're a lawyer,
25 consultant and an expert in responsible business

1 practices presently based in Ottawa?

2 A (MJ) that's correct.

3 Q You've developed expertise in anti-corruption
4 and anti-money laundering compliance, the human
5 rights responsibilities of businesses and modern
6 slavery supply chain due diligence?

7 A (MJ) That's correct.

8 Q You have a background in government, private and
9 non-profit sectors, including over a decade with
10 Global Affairs Canada and what was then National
11 Resources Canada addressing standards for
12 transparency and business practices in the
13 extractive sector?

14 A (MJ) Correct. Yes.

15 Q And you're a graduate of the University of
16 Toronto Faculty of Law, and following that you
17 worked with the special corps for Sierra Leon as
18 well as the Iran Human Rights Documentation
19 Center in New Haven, Connecticut?

20 A (MJ) Correct. Yes.

21 Q Mr. Taggart, you are the co-founder and CEO of
22 OpenCorporates?

23 A (CT) Yes, I am.

24 Q Glad I got that right. An experienced
25 entrepreneur. You previously ran and founded

Mora Johnson (for the commission)
James Cohen (for the commission)
Peter Dent (for the commission)
Chris Taggart (for the commission)
Exam by Mr. Martland

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1 Mr. Cohen -- you recognize that as being your
2 CV?

3 A (JC) Yes, I do.

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

6 THE COMMISSIONER: Exhibit 278.

7 THE REGISTRAR: 278.

8 **EXHIBIT 278: Résumé of James Cohen**

9 MR. MARTLAND:

10 Q Thank you. Tab 4. I'll continue to do this
11 alphabetically. Mr. Dent, sir, you'll recognize
12 that as being your CV or biographical summary?

13 A (PD) I do, yes.

14 MR. MARTLAND: I'll ask that please be exhibit 279.

15 THE COMMISSIONER: Very well.

16 THE REGISTRAR: Exhibit 279.

17 **EXHIBIT 279: Biography of Peter Dent**

18 MR. MARTLAND:

19 Q Next tab 3, please. Ms. Johnson, you'll
20 recognize your CV on display there?

21 A (MJ) Yes, I do.

22 MR. MARTLAND: I'll ask that please become
23 exhibit 280, Mr. Commissioner.

24 THE REGISTRAR: Exhibit 280.

25 **EXHIBIT 280: Curriculum Vitae of Mora Johnson**

Mora Johnson (for the commission)
James Cohen (for the commission)
Peter Dent (for the commission)
Chris Taggart (for the commission)
Exam by Mr. Martland

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1 MR. MARTLAND:

2 Q And tab 2. Mr. Taggart, you'll see that, sir,
3 is your CV on display?

4 A (CT) I do.

5 MR. MARTLAND: And if that might be please
6 exhibit 281.

7 THE COMMISSIONER: Very well.

8 THE REGISTRAR: Exhibit 281.

9 **EXHIBIT 281: Curriculum Vitae of Chris Taggart**

10 MR. MARTLAND:

11 Q As we turn to the topic for today's evidence,
12 I'd like to start with a pretty basic question,
13 which is this: when we think about the misuse
14 of corporate legal structures and in particular
15 as that connects to money laundering, how do you
16 identify that as a problem? In simple terms
17 what's the problem? And, Mr. Cohen, if I might
18 throw that question your direction first,
19 please.

20 A (JC) Sure. And thank you for having me today on
21 the panel. It's a great privilege to be here to
22 testify on behalf of Transparency International
23 Canada for the Cullen Commission and also for
24 myself to be testifying.

25 It's a pretty serious problem in Canada, and

1 I think this has come to a head through the term
2 snow-washing. And that was described in the
3 Panama Papers from 2016 when journalists from
4 the Toronto Star and CBC went through the
5 Canadian ramifications of the leaked documents
6 from the Panamanian law firm law Mossack Fonseca
7 and found that intermediaries overseas were
8 essentially advertising Canada as a easy place
9 to hide dirty money for two reasons. One, who
10 really thinks about Canada? Generally when you
11 think about money laundering you think of
12 Caribbean Islands or even the country where they
13 were from, Panama, or some -- or alpine
14 countries. But Canada, no one thinks about that
15 too generally. So a bit of a cloak there.

16 And then, two, the really critical factor is
17 our weak beneficial ownership -- weak beneficial
18 ownership regime within Canada. And so
19 intermediaries would say to their clients, bring
20 your -- paraphrasing here -- bring your dirty
21 money to Canada; it will be cleaned like the
22 pure white snow, hence snow-washing. And our
23 beneficial ownership regime has been -- hasn't
24 only been advertised by these entities but also
25 criticized by international bodies. So the

1 Financial Action Task Force, the global
2 oversight body, in the peer review in 2015
3 highly critiqued Canada in sections 25 and 26 on
4 business entities and legal entities deeming us
5 light compliance and almost non-compliance in
6 these areas.

7 Not only that but in 2014 Canada committed
8 itself to the G20 principles on beneficial
9 ownership. And since then Transparency
10 International has conducted two reviews of all
11 G20 countries in their adherence to the G20
12 principles. In the first review in 2015 a
13 number of countries were deemed to have a weak
14 framework, which wasn't too surprising. But by
15 2017 a number of our peers had managed to move
16 up the ladder to a better framework while Canada
17 was left in the back as a lagger with South
18 Korea, maintaining a weak framework on
19 beneficial ownership transparency.

20 So we do have an international reputation
21 from the money -- the enablers of money
22 laundering themselves but from organizations
23 that we submitted our own review to as a
24 country. And the reason why we have this
25 problem is that we have not had the obligation

1 to put forward beneficial ownership information
2 into any legal compliance, any government
3 mechanisms within Canada up until very recently.
4 Traditionally it's just been financial
5 institutions and insurance institutions that
6 have had to conduct their own beneficial
7 ownership due diligence as part of our national
8 legislation, the Proceeds of Crime (Money
9 Laundering) and Terrorist Financing Act.

10 And so our banks and our insurance
11 institutions have been spending hundreds
12 of millions of dollars conducting their own
13 compliance. It's only under pressure since 2015
14 internationally, and domestically as well, that
15 there's been starting to be some movement within
16 Canada moving forward on consultations on should
17 there be a registry, especially a publicly
18 accessible registry, and even should more
19 entities be required to do beneficial ownership
20 due diligence.

21 So we've seen amendments to the PCMLTFA this
22 year that more entities such as accountants and
23 real estate agents will need to conduct
24 beneficial ownership transparency, which is a
25 really progressive move. But on actual registry

1 of beneficial ownership we are still moving at
2 close to a snail's pace here. The Province of
3 British Columbia's is thankfully moving forward
4 on the Land Ownership Transparency Act and the
5 Province of Quebec is moving forward with
6 recommendations on a publicly accessible
7 registry. We had consultations by the federal
8 government earlier this year but we haven't seen
9 the results of that consultation.

10 So we certainly hope that the situation of
11 our global reputation of a lagger globally on
12 beneficial ownership transparency moves as we
13 even saw the prime minister last year make an
14 announcement that money laundering is of
15 national importance within the country, but of
16 course COVID-19, with so many other issues, has
17 kind of -- seems to have played down the
18 significance. But I would argue that if we
19 don't want our economy to be bolstered up by
20 further dirty money seeping its way into our
21 real estate sector, into gaming, as was the
22 impetus for the Cullen Commission, even into our
23 universities, we need to crack down early on --
24 or we need to bolster our beneficial ownership
25 framework so that we're not in a place where the

1 Canadian economy is partially brought back up
2 from -- a COVID-19 recovery based on dirty money
3 and that dirty money winds up entrenching itself
4 further into our economy and creating more
5 stakeholders who rely on that dirty money who
6 would fight -- or who would not want
7 transparency as a solution to fighting that
8 dirty money.

9 MR. MARTLAND: Thank you. Madam Registrar, if you
10 might display the cover of tab 5.

11 Q And tab 5, Mr. Cohen, you'll recognize that, a
12 document that's been prepared by -- I think it's
13 sometimes call the End Snow-Washing Coalition --
14 the Canadians For Tax Fairness, Publish What You
15 Pay Canada and TI Canada, a report that I
16 understand you were involved in. We see from
17 the title, it seems to frame it as the BOT
18 registry -- a public BOT registry being a
19 solution or part of the solution to come to
20 grips with snow-washing?

21 A (JC) Yes. Yes.

22 MR. MARTLAND: I'll ask that this please be marked as
23 the next exhibit. I think that will be 282.

24 THE COMMISSIONER: Very well. Thank you.

25 THE REGISTRAR: Exhibit 282.

1 **EXHIBIT 282: Transparency International Canada,**
2 **Ending Canada's Snow Washing Problem with a**
3 **Publicly Accessible Beneficial Ownership**
4 **Registry - An Advocacy Handbook, April 2020**

5 MR. MARTLAND:

6 Q Mr. Taggart, would you please help us understand
7 from your point of view what is BOT, or
8 beneficial ownership transparency, and why is it
9 important.

10 A (CT) Yeah, absolutely.

11 MR. MARTLAND: I'll just interrupt to say, Madam
12 Registrar, we don't need to have that document
13 at this point on screen. Thank you.

14 THE WITNESS: (CT) I mean, I've been working this
15 area for close to ten years now and beneficial
16 ownership, I mean, it's a hard term, first of
17 all. Nobody, you know, outside of those who
18 work in financial crime or compliance or that
19 sort of thing really is familiar with it. But,
20 you know, is it who owns the company who
21 benefits from it? Of course it's a little bit
22 of both, but what -- I think what we really mean
23 when we're talking about beneficial ownership
24 transparency is the people who get the benefits
25 from the company and who have that ability to

1 control that company and when that's not
2 immediately obvious.

3 The vast majority of companies in -- I'm
4 sure, in BC, in Canada, certainly in the UK are
5 very, very simple. There's just a company
6 operating, running a shop, restaurant, business,
7 factory, printers and so on. The owners are the
8 directors. The beneficial owners, you know, are
9 those same people as well, incredibly simple.

10 It's only when you get to much more complex
11 structures that beneficial ownership
12 transparency comes in and you start -- and
13 whether you start talking about the ultimate
14 beneficial owner or, you know, other sort of
15 terms, what we're really talking about is when
16 the shareholding doesn't tell you the story.
17 And so a simple company, here are the directors,
18 also the shareholders, they're also the
19 beneficial owners. That's really straight
20 forward.

21 When does that happen? A number of cases.
22 One is when you've got some sort of complex
23 structure. A very large company with some --
24 with a complex structure, sometimes for
25 divisions, sometimes for tax benefits, for

1 complex tax -- offshore tax structures.
2 Sometimes because you don't want people to know
3 that you own the company. You know, let's say
4 you're Uber and, you know, there's a local
5 company that is doing a pretty good ride sharing
6 thing and you want to come in and you want to,
7 you know, come in and dominate that market and
8 flood it with money and take over that market,
9 then obviously people not knowing that the
10 company Uber is behind that company will give a
11 lot of advantages to doing that. And of course
12 criminals use this as well.

13 And so -- but we're only talking about --
14 when we're talking about this in terms of this
15 transparency, we're only talking about what was
16 always intended, at least in many jurisdictions,
17 certainly in the UK where -- which pioneered
18 limited liability companies, we're only really
19 talking about shareholding without obfuscation,
20 essentially. And so that's what I think we --
21 that's what generally is meant and different
22 places have interpreted in different ways in
23 terms of -- well, it's a percentage of
24 shareholding; it's the ability to appoint
25 directors; it's the ability to, you know,

1 control through nominees and so on. And we can
2 define a regime through that, but actually
3 beneficial ownership is a little bit wider than
4 that, in my view, and it's about the ability to
5 control or benefit.

6 So it's quite possible to control a company
7 without being a director and without being a
8 shareholder either. You can use contractual
9 mechanisms for doing that. It's quite possible
10 to benefit from a company with just a relatively
11 small amount. If you're, you know, let's say, a
12 government official in West Africa, for example,
13 and there's a mineral rights contract coming up,
14 actually 5 percent of that contract, even
15 2 percent of that contract is a substantial
16 amount. And so, you know, we might for
17 practical reasons define it in certain -- you
18 know, under certain regimes and what we are
19 going to collect and what we're going to do, but
20 really I think what we're talking about is
21 people generally having an understanding of what
22 is a company and who's behind it and who
23 benefits from it.

24 Q And I think from that, Mr. Taggart, part of this
25 is getting to the -- if I can use this

1 terminology, getting to the real people, the
2 real owners as opposed to -- or the real people
3 either owning or controlling as opposed to, as
4 you say, who shows up on a list or maybe even
5 companies that are owned in part by other
6 companies or other legal entities. And almost
7 like Russian nesting dolls, you can't get to the
8 true answer as to who's at the heart of it. Is
9 that one way to think of this?

10 A (CT) It is. And in most of these cases, you
11 know, and particularly in the -- we are talking
12 about individuals who are -- whether you're, you
13 know, some sort of -- you know, some -- an
14 oligarch from Eastern Europe or, you know,
15 someone behind -- running a drug cartel or
16 fraudsters, you know, there are individuals
17 behind this.

18 Now, you know -- but there are also -- you
19 know, imagine -- you know, let's say,
20 everyone's -- from the James Bond movie Spectre
21 and things like that, it is possible for
22 criminal enterprises to have multiple people
23 behind them and for there not to be one person
24 as well. So I think this is really about giving
25 visibility if we just limit it, and there are

1 very good business reasons why you wouldn't
2 limit, you know, companies just to have
3 individuals as shareholders and not have
4 corporate structures. But if you just have
5 individuals as shareholders and that was all,
6 and that was the simple world that we used to
7 have, you know, a few hundred years ago, then I
8 think in that case, you know, what we're talking
9 about is you being able to see who the
10 shareholders are, who controlled this, who
11 benefitted from it.

12 But now in a world which is globally
13 connected and where companies can exist in
14 multiple areas, where corporate networks can
15 evolve very, very quickly and so on, this is
16 really about pulling back the curtain and seeing
17 what's really going on. And I think that's
18 important not just from a financial crime point
19 view, from a law perspective, from
20 anti-corruption point of view, it's also
21 critical for business as well.

22 Q Mr. Dent, do you have a comment on this?

23 A (PD) Thank you. And thank you for inviting me
24 to be part of this panel today as well.

25 Yes, the comment that I have, of course I

1 share the sentiments of both Mr. Cohen and
2 Mr. Taggart expressed thus far. But to sort of
3 summarize this, there is other elements of the
4 issue around the misuse of corporate structures
5 to facilitate money laundering. So corporate
6 anonymity allows a beneficial owner to distance
7 themselves from the predicate offence and also
8 it allows them to increase the complexity and
9 expense of conducting an investigation. Those
10 are two issues that should not be lost in the
11 overall comments of this. And maybe we'll come
12 back to that later during our discussion this
13 morning.

14 But shell companies allow an inexpensive
15 means of adding one or more layers between the
16 beneficial owner and the alleged criminal
17 transaction in question. And so, you know, one
18 way to describe this is to use an example. And
19 so, for example, an owner -- a beneficial owner
20 of a company is bidding on a government
21 contract, and in order to get that government
22 contract they pay a bribe to a government
23 official. Now, it wouldn't be wise for that
24 beneficial owner to pay that bribe directly out
25 of their company and therefore what they will do

1 in many instances is set up a shell company.
2 And that shell company may or may not include
3 them as a director. Often it does not. If they
4 set up that company in Canada, then the
5 shareholder information around that shell
6 company is not available, certainly not easily
7 available to either law enforcement or the
8 general public. And then they will subcontract
9 goods and services. Those goods and services
10 may be the same goods and services that they
11 were providing to the government contracting
12 entity or not. But in essence, then, the
13 transaction or the bribe payment is made through
14 the shell company that they've set up and it
15 insulates them from the transaction.

16 Now, if they're being really wise, then they
17 will set up another shell company underneath
18 that first shell company, so what I'll refer to
19 as SC2. SC2 has then subcontracted the goods
20 and services contract, has different directors
21 associated with it and may in fact have
22 different shareholders as well of public record.
23 And therefore that's a further complexity and
24 sort of layer of insulation between them and the
25 ultimate company that was gaining the -- who

1 they're a beneficial owner of.

2 And so therefore it's this misuse of these
3 shell companies or private company structures
4 that allow that beneficial owner to hide or
5 disguise or mask who they are from the original
6 transaction. And if they're really smart about
7 it, one of these shell companies or both of them
8 will be set up in jurisdictions outside of
9 Canada. Not because those jurisdictions afford
10 even more anonymity than Canada does -- in many
11 instances Canada affords enough anonymity around
12 the shell company ownership structure to
13 insulate them -- but what it does is it adds to
14 the complexity of conducting an investigation.
15 It goes from a domestic investigation to an
16 international investigation. It increases
17 exponentially the costs of conducting that
18 investigation and it dissuades, whether it be
19 the private sector or the public sector, in
20 following through on such an investigation. So
21 that would be -- we shouldn't lose sight of how
22 those -- that misuse is and what the strategy of
23 these misuses of corporate structures are.

24 Q Thank you. Ms. Johnson, I'd like to turn to
25 you.

1 MR. MARTLAND: And if I might ask Madam Registrar to
2 display tab 10.

3 Q Ms. Johnson, you'll recognize this as being the
4 paper that you've written for -- I suppose
5 commissioned by the commission, so to speak,
6 specifically looking at key issues relating to a
7 BOT registry in this province and providing
8 information and advice for the benefit both of
9 the public and also this inquiry process; is
10 that fair?

11 A (MJ) Yes.

12 MR. MARTLAND: Mr. Commissioner, I'll ask, please,
13 that this submission to the Cullen Commission
14 document dating to November of this year be
15 marked as the next exhibit please.

16 THE COMMISSIONER: Very well.

17 THE REGISTRAR: Exhibit 283.

18 **EXHIBIT 283: Mora Johnson: Submission to the**
19 **Cullen Commission - November 2020**

20 THE COMMISSIONER: Thank you.

21 MR. MARTLAND: And if I might ask to go to page 3 of
22 the PDF as well as the numbered page of the
23 document. And in doing this what I'd like to do
24 is read a portion of it and then ask a few
25 questions. So I'll begin -- if we go down just

1 a little bit please, Madam Registrar, to --
2 that's fine.

3 Q If we look in the middle there's a
4 paragraph that reads as follows:

5 "In policy discussions about increasing
6 the transparency of corporations, it is
7 worth recalling that corporations are
8 creatures of statutes passed by
9 legislatures, and therefore, their
10 proliferation in our economy and society
11 represents a deliberate public policy
12 choice. Through incorporation, a company
13 with a separate legal personality is
14 created under the law, whereby the
15 liability of those investing in the
16 company is limited to the amount invested.
17 Thus, the corporate form represents a
18 fundamental intervention of the state into
19 the free marketplace, altering potential
20 risks, benefits, and liabilities of
21 different stakeholders. Note that
22 incorporation does not reduce risks, but
23 rather, displaces them, tipping risks away
24 from investors and reallocating them onto
25 others in our economy, largely creditors,

1 consumers, and governments."

2 In the next paragraph down you write:

3 "Additionally, as is being examined --"

4 And you refer to this commission.

5 "... the corporate form is also
6 regrettably associated with its abuse by
7 criminals to anonymize their activities
8 and hide from law enforcement."

9 And since I'm reading from this I'll read the
10 next portion as well.

11 "This submission argues that corporate
12 beneficial ownership transparency will not
13 only assist law enforcement in
14 investigating money laundering, tax
15 evasion and organized crime, but that much
16 broader societal benefits will be gained
17 in ensuring that all actors in the economy
18 who encounter corporations will be able to
19 have information about who owns and
20 controls them."

21 So having read that out, because I think that's
22 a useful way to frame the discussion, would you
23 care to comment on whether anonymous ownership
24 is a legitimate feature of companies?

25 A (MJ) Thank you, and thanks also for just

1 inviting me to be here today.

2 So in my view there actually is no
3 principled justification writ large for
4 anonymity of companies. As you've read out,
5 it's a fundamental policy choice to displace
6 risks and to alter risks in the free market.
7 But given that creditors, consumers and also
8 governments, who often don't get their taxes
9 paid, incur higher risks, I think the benefits
10 are really obvious of increasing beneficial
11 ownership transparency.

12 There also -- you know, it was mentioned
13 earlier by Peter, public procurement is another
14 area where officials will benefit from knowing
15 who owns companies. Consumer watch dogs.
16 There's a whole range of actors in our economy
17 that would greatly benefit from knowing who owns
18 or controls corporations. And certainly I echo
19 what Peter was saying about the criminal misuse
20 of corporations.

21 So in short there's no writ large
22 justification for anonymous ownership of
23 corporations. There might be some narrow
24 exceptions with public disclosure, and we can
25 talk about that when we talk about privacy.

1 Q If I might just pick up on one point that you
2 referred to: the public procurement question.
3 I take it that brings into question the matter
4 of public or government contracting and the
5 possibility of corruption in terms of who is
6 bidding for contracts, how they're awarded,
7 et cetera. Those sorts of issues come -- arise
8 in that context?

9 A (MJ) Yes. Absolutely. I mean, there's often
10 restrictions on who is eligible to bid on
11 government contracts. There might be -- I mean,
12 just depending on the jurisdiction and the kind
13 of contract. There would also be -- or people
14 who are prohibited from bidding on the
15 contracts. For example, people who have been
16 convicted of fraud or money laundering. There
17 might be particular corporations that are
18 prohibited for ten years. And so beneficial
19 owners can merely create a brand new shell
20 corporation and set up and put in an excellent
21 bid that would -- you know, that would go around
22 the legislative objectives. So it's really
23 important for officials running public
24 procurement to know who the beneficial owners
25 are.

1 MR. MARTLAND: Madam Registrar, we don't need the
2 document displayed at this point. Thank you,
3 though.

4 Q Mr. Taggart, would you like to add to those
5 comments?

6 A (CT) Thank you. Yes. This is maybe coming from
7 a techie's perspective, another way of looking
8 at this, you know. I really strongly echo what
9 Mora said. And, you know, I've been in the
10 private sector my entire life and, you know, not
11 come from an engineering background and anything
12 like, but, you know, there's two huge benefits
13 to companies and -- but I really don't see
14 anonymous ownership any -- forms any legitimate
15 feature at all. There might be benefits for a
16 company -- an individual company, for them to
17 have it. They might see a benefit in the same
18 way they might have a benefit to not paying
19 taxes or not cleaning up after their chemical
20 spills or undermining competition but it doesn't
21 mean it's good for society. But I'm looking at
22 this from a slightly different perspective.

23 What I think is happening is that, as Mora
24 said, it's about a legal construct that's being
25 created by law. And what's happening is when

1 somebody creates one of these legal constructs,
2 they create a legal person, a legal person who
3 can act on their behalf. You know, that person
4 can hold assets; it can owe money; it can employ
5 people; it can enter into contracts on their
6 behalf; it can even break the law.

7 So the owners get the benefit from this
8 proxy person, but they don't get any of the
9 downsides. You know, they get the money, they
10 get the activities, they get the influence, but
11 they just don't -- you know, don't get hit by
12 losses and they don't go to jail if the company
13 has broken the law in most cases.

14 And so it's a great -- it's a great wheeze,
15 but it's not just that because the -- this proxy
16 for the owner, which is, you know, almost like
17 an avatar or someone they can control by remote
18 control, it can only -- it doesn't just do this
19 in the jurisdiction where the owner's based and
20 where the company's incorporated, it can do this
21 anywhere in the world. So you have this sort of
22 like remote control person that can go off and
23 do all sorts of things, can get the benefits and
24 even if it's caught functionally, mostly what
25 the recourse is is the assets of that local

1 company and not to the people that are behind
2 them.

3 And so this is a tremendously powerful
4 thing. And of course it's not even that.
5 It's -- you have this remote control actor --
6 remote controlled actor who can control other
7 actors. You can have companies controlling
8 companies controlling companies. You can have
9 them diverting their control. You can make
10 it -- as Peter said, make this incredibly
11 complex.

12 And when I look at this, I see something
13 that's much more like a -- you know, Russian
14 hacker or something controlling a computer in
15 the Seychelles that controls a computer in the
16 Cayman Islands that controls a computer in
17 Nevada that controls a computer in
18 British Columbia and then that hacks somebody's
19 bank account, for example. You know, it's --
20 and they're using all of these to obfuscate it.
21 And of course, like that computer hacker, by the
22 time you've discovered what's happened to -- the
23 crime that -- you know, by the time that crime
24 becomes visible, the network's gone or
25 functionally it's gone. The money's gone. You

1 can't get back at that person.

2 And we're not talking small sums here.

3 Danske Bank started from 2007 and it's only now
4 coming out that's over \$200 billion. And
5 because of this, I think -- and again backing up
6 what Mora says -- we've got this fundamental
7 fact that this -- you know, that the
8 construction of this legal entity, this proxy,
9 the sort of remote control body must necessarily
10 be a public act. Because if it isn't, if you
11 can't see that, then we are in a very difficult,
12 dangerous world.

13 And this was acknowledged way back in the
14 19th century with the birth of the company as we
15 know it. And actually the BC consultation
16 document talks about the 1856 Companies Act,
17 which was the first one to introduce limited
18 liability companies en masse. And Robert Lowe,
19 who later became chancellor of the Exchequer,
20 introducing that act said it's essential to give
21 "the greatest publicity to the affairs of
22 companies, that everyone may know on what
23 grounds he is dealing." And that's
24 fundamentally what we're talking about here. So
25 this -- there is really no justification in

1 anonymity. And if it's allowed and we are
2 seeing the results, terrible, terrible things
3 happen. Not just about money laundering but
4 fraud, people walking away from their
5 responsibilities, corruption, you know,
6 organized crime. All sorts of things. And as
7 well undermining competition.

8 So I think that this must necessarily always
9 be a public act, and so I would support the idea
10 that there is no place for anonymity. Thank you
11 for your time.

12 Q I appreciate those points. That was helpful.

13 Mr. Cohen, I'd like to ask you. Do you --
14 would you describe there being some building
15 international shared support or an international
16 norm that's emerging in support of the concept
17 of BOT and BOT registries?

18 A (JC) Yes, I'd say that there is. There's a
19 couple of paths forward for the momentum for
20 beneficial ownership transparency in a registry,
21 and not just a government accessibly -- or
22 government accessible registry but in a publicly
23 accessible registry. And this really kicked off
24 with the United Kingdom government establishing
25 the persons of significant control registry in

1 2016, and thankfully this started to put
2 pressure on additional countries with more
3 advocates calling for this.

4 So one of the big pillars we see for the
5 movement forward on a publicly accessible
6 registry is with anti-money laundering
7 directive 5 in the European Union, and this
8 required all EU members to establish a publicly
9 accessible registry by 2020. Now, some
10 countries have been moving slower than others,
11 they've been benchmarked and critiqued on this,
12 but there still is still that target. We've
13 seen countries, though, like Denmark, Slovakia
14 have publicly accessible registries, Portugal to
15 an extent. It's accessible by Portuguese
16 citizens who log in with their national ID card.
17 We even see countries outside of the EU within
18 the European area such as Ukraine establishing a
19 registry. So this has put up a lot of momentum
20 and even people will -- a lot of criticism will
21 come that that's fine that the United Kingdom
22 has a publicly accessible registry but the real
23 problem is their overseas territories. And
24 we're happy to see that in the UK legislature
25 that there was passage for the need for the

1 establishment of publicly accessible registries
2 that and that these overseas territories are
3 cooperating with this. And we've seen
4 announcements from countries like the British
5 Virgin -- or from British Virgin Island and
6 Cayman Islands move towards a public registry.

7 The other areas that are looking -- or the
8 other movements that are picking up on this are
9 the Extractive Industries Transparency
10 Initiative, EITI, which has over 15 members.
11 And they've called upon all members as part of
12 being accredited to EITI to publicly -- or to
13 publish the information of beneficial -- of
14 ultimate beneficial ownership for any company
15 that wants access to resources or mining or gas
16 and oil rights within their country. They don't
17 specifically call for a registry, but they have
18 recommended that a publicly beneficial ownership
19 registry is the best way to hold this
20 information or to store this information and
21 make it accessible.

22 And then finally, also the Open Government
23 Partnership, of which Canada is a member and was
24 a co-chair last year. There's been movement for
25 publicly accessible registries with the BO

1 leadership group, headed by the UK once again,
2 and signed on members including -- Kenya and
3 Mexico, Armenia, Slovakia I believe are the
4 members calling for publicly accessible
5 registries. So we're seeing more and more
6 momentum, more and more movements collecting
7 this as an initiative.

8 Most recently in Transparency
9 International's biannual exporting corruption
10 report that focuses on OECD member countries'
11 commitment to the anti-corruption or the
12 anti-bribery convention, we -- or Transparency
13 International, our secretariat office in Berlin
14 scored countries on their beneficial ownership
15 information as part of an acknowledgement that
16 it's important to have ultimate beneficial
17 ownership information available to crack down on
18 bribery. And there's a push to acknowledge that
19 within the OECD.

20 And then finally, of course there's the
21 question of the United States and where is it
22 going on beneficial ownership transparency, and
23 they are within a breath of passing legislation
24 that's been -- that has support from both the
25 Republican and Democratic parties for

1 establishing a national registry in the US.

2 So this leaves Canada still kind of falling
3 behind in this area. At least we are talking
4 about it, but as we drag our feet we become more
5 and more of the laggards. And as we become the
6 laggards internationally, we become the easy
7 target as well for the crooks to want to place
8 their funds.

9 Q Mr. Cohen, you've sort of taken us from the
10 international and then turned to Canada. And if
11 we set aside the province of British Columbia
12 for a moment, could you say more about within
13 Canada either at a national level, as I say
14 setting aside BC for a moment, other provinces,
15 what sorts of developments and the level of
16 progress that you see in Canada, please.

17 A (JC) Right. So since the critique, the 2015
18 peer evaluation from the FATF, we've seen some
19 movement on addressing beneficial ownership
20 transparency in Canada, but it's still
21 relatively slow. This has kicked off with
22 federal, provincial, territorial discussions at
23 the -- amongst ministries of finance to discuss
24 beneficial ownership. We're happy to see that
25 momentum. And it led to what -- and I can't

1 speak to the exact formality of the process, but
2 there was an agreement that there was going to
3 be this kind of two-phase approach.

4 One was updating all jurisdictions'
5 corporate registry laws within the first phase.
6 So the federal government updated the
7 corporations -- or the Canadian Business
8 Corporations Act so that it required all
9 federally incorporated companies to have
10 beneficial ownership information on hand should
11 it be requested by relevant authorities. So
12 that includes FINTRAC, the CRA and RCMP. But
13 that's without a warrant. So it's the
14 equivalent of going up to a potential criminal's
15 house, knocking on the door and saying, would
16 you please bring out your beneficial ownership
17 information, and waiting a while while somebody
18 maybe slips out the back and sets up another
19 house.

20 All provinces and territories were meant to
21 mirror this legislation. I don't have on hand
22 how many of the provinces and territories have
23 mirrored. I do know we -- Transparency
24 International Canada, we participated in public
25 consultations for Ontario to bring that -- or to

1 mirror that information. I believe Nova Scotia
2 has updated their legislation to update that
3 information as well. The same with
4 British Columbia.

5 The second phase is looking at a publicly
6 accessible registry of beneficial ownership.
7 The federal government held public consultations
8 on that question in February or in spring --
9 winter/spring this year they closed around May.
10 The Province of British Columbia also held
11 consultations and the province of Quebec just
12 went ahead and proposed a publicly accessible
13 registry in their 2020/2021 budget. So there is
14 movement there.

15 So there's this discussion of because you
16 can't just have any one jurisdiction move
17 forward on establishing a publicly accessible
18 registry, you need to have this coordination.
19 Because if the federal government were to only
20 have a publicly accessible registry, that's one
21 of 14 jurisdictions, and I believe last we had
22 in one of our reports that the federal
23 government's public registry is about the fourth
24 largest corporate registry in Canada. So there
25 needs to be harmonization so that, once again,

1 within Canada crooks don't just find the easiest
2 path that there is.

3 And once again I highlighted that the prime
4 minister raised anti-money laundering last year,
5 and I would say that events in British Columbia
6 have put it up to a national level. The
7 revelations of the term "snow-washing" and
8 "Vancouver Model" brought it up to a national
9 level. And then even in last year's federal
10 election we saw three main party -- the
11 Liberals, Conservatives and NDP all put some
12 proposal of anti-money laundering within their
13 federal platforms. And once the liberals were
14 elected into the minority government, we did see
15 in federal mandate letters the Minister of
16 Finance and the Minister of Industry, Science
17 and Development -- and Education [sic]
18 Development have -- looking into a beneficial
19 ownership registry within those mandate letters.

20 So we do know that it does have priority at
21 a federal level. I believe also the Minister of
22 Public Safety had -- addressing money laundering
23 in his mandate letter. We're still waiting to
24 see the updated mandate letters across the
25 federal government, and we hope that it sustains

1 that level of priority. So it's really a matter
2 of making sure the movement goes forward on this
3 within Canada.

4 Q The End Snow-Washing Coalition has a report that
5 deals with this.

6 MR. MARTLAND: Madam Registrar if we could look at
7 tab 6, please.

8 Q And I'll just read out the title as that is
9 brought up. "Implementing a Publicly Accessible
10 Pan-Canadian Registry of Beneficial Ownership."
11 It's a review of legislative and technical
12 options.

13 Mr. Cohen, you recognize that report on this
14 topic?

15 A (JC) I do. I do.

16 MR. MARTLAND: I'll ask that that please be marked as
17 exhibit 284.

18 THE COMMISSIONER: Thank you.

19 THE REGISTRAR: Exhibit 284.

20 **EXHIBIT 284: Transparency International Canada,**
21 **Implementing a Publicly Accessible Pan-Canadian**
22 **Registry of Beneficial Ownership - Legislative**
23 **and Technical Options, 2020**

24 MR. MARTLAND: And I'll next turn from the national
25 to the province of British Columbia. And to

1 situate ourselves we're -- and I don't need that
2 document displayed at present. Thank you. The
3 context here is considering a BOT registry for
4 companies in relation to -- and there's already
5 been some reference to this in terms of a
6 consultation in this province -- recent efforts
7 by the Province of British Columbia moving
8 towards a registry. There have been efforts
9 that deal with that in the real estate context
10 as well as the company context, so I want to try
11 to make sure we separate the two for the purpose
12 of our discussion.

13 I wonder if I might try to do this first
14 with -- tab 14 from the list of documents,
15 Mr. Commissioner, is already an exhibit. That's
16 exhibit 55. If that could please be brought up.

17 Mr. Dent, I'll give you a warning, this is
18 headed your direction, sir, once I can formulate
19 a question.

20 Tab 14 we see the "BC Consultation on a
21 Public Beneficial Registry." And if we look,
22 please, to -- I'll just review briefly what this
23 document is. So if we go down to the foreword.
24 I think that will be page 3 of the PDF or so.
25 We see there at the top of course a foreword

1 from the Minister of Finance and Deputy Premier
2 at the time about three or four paragraphs down
3 a paragraph beginning with "our work." And then
4 that refers to the expert panel report,
5 Professors Maloney, Somerville and Unger,
6 recommendations to improve data collection and
7 data sharing, including, from the expert panel
8 report, recommendation 5 suggesting consultation
9 on a full corporate beneficial ownership
10 registry consistent with best practices.

11 If we go over to the next page, please. And
12 all of this is to try and situate what -- where
13 things stand in this province and then ask you
14 some questions about it. The second
15 paragraph there:

16 "B.C. added to this global momentum last
17 spring with the successful passing of --"
18 LOTA.

19 "-- the Land Owner Transparency Act, which
20 establishes the world's first public
21 registry of beneficial ownership in real
22 estate."

23 And then there's indication in the next sentence
24 about consultations to increase beneficial
25 ownership transparency of companies. And that

1 is referred to in the next paragraph:

2 "Our next step is to consider how
3 transparency for the beneficial ownership
4 of companies will look in the future --"

5 And then really a call-out for people to give
6 their input on that very topic. If we go to the
7 next page briefly you'll see the different means
8 of communication that were put on offer for
9 people to make submissions to it.

10 If we go over, please, to page 8, which -- I
11 think it will be down a few more pages perhaps
12 because I'm looking at the page numbering.
13 Probably page 10 of the PDF.

14 There at the bottom "The Current State of
15 Company Beneficial Ownership in BC." Reference
16 to the British Columbia Business Corporations
17 Amendment Act 2019 eliminating bearer shares,
18 requiring BC private companies to list their
19 beneficial owners using the terminology of
20 "significant individuals" in the legislation and
21 a transparency register at the company's
22 corporate records office and is then said to be
23 accessible by law enforcement, tax authorities
24 and certain regulators.

25 And maybe I can just pause there to make

1 sure we have the distinction between a public
2 registry and what this refers to as being
3 records that are held at a records office
4 accessible by law enforcement and certain
5 authorities.

6 So, Mr. Dent, why don't I ask you, please,
7 if you could help us understand that
8 distinction. Sorry, Mr. Dent. You are muted.

9 A (PD) Sorry, I --

10 Q No, no.

11 A (PD) -- strategically double muted myself.
12 Sorry about that. But you're asking me in terms
13 of the impact of having information available in
14 what is referred to as a transparency registry?

15 Q Yes.

16 A (PD) But -- yes, in effect it's not transparent.
17 That would be my response. And it's not
18 transparent because it's not accessible to the
19 general public. It's not accessible to other
20 government agencies or regulators without making
21 a request to gather that information. And so it
22 is good first step in that now private companies
23 in BC must maintain a record of who their
24 beneficial owners are. Now, that record,
25 though, is then maintained at their corporate

1 records offices, wherever they may be located.

2 I hope that answers the question.

3 Q Yes, that's helpful. So we're talking about
4 records that are, I guess in very practical
5 terms, held at some business address or records
6 office, as you say as, as opposed to, for
7 example, when we speak about the publicly
8 accessible. In this day and age I take it
9 that's universally an online platform that
10 people can simply click their way along to
11 access the information?

12 A (PD) That's correct. It's not publicly
13 accessible. And while law enforcement or the
14 tax authorities other regulators could make a
15 written request or they could get a court order
16 to obtain access to it, it is -- if they have to
17 make a request, one would argue that it's also
18 dissuasive in terms of making that request
19 because it would enable or it would result in
20 the tipping especially that an ongoing
21 investigation is underway into the matter. And
22 so unless law enforcement wanted to tip the
23 subjects of the investigation that one was going
24 on and weren't at the stage of being able to
25 obtain a court order, that might dissuade them

1 from actually making a request.

2 MR. MARTLAND: In terms of getting a read on where
3 the province stands right now, if we could
4 please look to -- I think it will be page 13 of
5 this PDF, Madam Registrar.

6 Q And you'll see there chart 1 "BC's Progress on
7 the Expert Panel's 5 Beneficial Owner Best
8 Practices." First that the information is
9 maintained about beneficial owners. That's
10 stated to be in progress, but this is the point
11 you've just been referring to, Mr. Dent, that
12 it's at the records office as opposed to a
13 public -- a publicly accessible database.

14 A (PW) Not a publicly -- it's not a public
15 database either. This is maintained
16 individually within the corporate records.
17 There is nothing that is maintained within a
18 central database unlike a driver's licence
19 database or, you know, another -- or a BC health
20 database. There's no publicly accessible -- or
21 no even government accessible registry or
22 database of this information.

23 Q The next item listed is that the ownership
24 threshold -- the recommendation in the expert
25 panel report was not higher than 10 percent.

1 You'll see in the right side of that chart
2 BC has chosen the 25 percent threshold to align
3 about the federal, provincial, territorial
4 working group on beneficial ownership.

5 A (PD) Yes, that's correct.

6 Q We will circle back to speak some more about the
7 threshold of whether it's 25 or 10 or what sort
8 of approach is taken. Third:

9 "The beneficial ownership register should
10 include all types of non-individual
11 owners."

12 And what it says on the right is that the
13 register requirements apply to private companies
14 but not partnerships or trusts.

15 A (PD) That's correct.

16 Q Is that a fair statement of where things stand
17 in BC at present?

18 A (PD) Yes, that's correct.

19 Q Again, a point we've already covered somewhat.
20 That:

21 "The ... ownership register should be
22 easily accessible and regularly updated."

23 And where that stands the right side, this is
24 item number 4:

25 "Transparency register is only accessible

1 by law enforcement, tax authorities and
2 designated regulators."

3 A (PD) That's true. There is not -- does not
4 appear to be a verification process that is
5 currently in place. There are options for
6 verification open to the government. One is
7 that they can do spot checks. So there is a
8 verification process that they can do through a
9 spot check just to ascertain whether or not the
10 information is correct but that -- the onus is
11 then on -- the onus is on the government to
12 conduct those spot checks and have the resources
13 available to do that.

14 The other one is there a certification
15 process that a corporation would certify this
16 information is accurate that it is providing.
17 But that does not include -- similar to what
18 companies do in terms of certifying their
19 financial statements where it's an individual
20 officer within the organization, in that case it
21 would be the chief financial officer that is
22 certifying the accuracy of the financial
23 information. There is not -- to my
24 understanding there's not a designated
25 individual that would have to sign that they

1 have certified that this information is correct.

2 Q Why does it matter to have someone signing on
3 the dotted line?

4 A (PD) Well, it creates a level of personal
5 responsibility within the organization. And so
6 somebody is then ultimately accountable for the
7 accuracy of that information. It is not -- the
8 accountability is not diffused across the
9 corporation.

10 Q And I wonder if you could -- if I could
11 continue, Mr. Dent, in quizzing you a little bit
12 with respect to the state of play on corporate
13 beneficial ownership information as opposed to
14 in the Land Owner Transparency Act context, that
15 legislation. If you could help us understand
16 how those might be -- what do they share in
17 common versus where do they differ?

18 A (PD) Well, I mean, where they -- what they share
19 in common, at least in terms of corporate --
20 private company information in BC is that it is
21 not different than private company data in the
22 rest of Canada in that there is no single source
23 of beneficial ownership information around
24 private companies in Canada. There's no data
25 independence and reliability that you can place

1 on information that is maintained, where
2 information is maintained in the public record.
3 There's no requirement for that data to be
4 current. Well, there is a requirement for the
5 data to be current, but there's no means of
6 enforcing compliance around maintaining the
7 currency of the data in corporate registration.
8 That could mean corporate filings, directorship
9 information. There's no data verification.
10 We've already talked about that. And there's
11 not a lot of enforcement or sanctions for
12 submitting incorrect data or information in the
13 public record either.

14 So there's not a lot of difference between
15 BC and the rest of Canada with respect to
16 private company data. There is of course --
17 what is different with respect to the Land Owner
18 Transparency Act and land owner transparency
19 register is that it is a first step towards
20 basically recording beneficial ownership, but it
21 is specifically focused around real estate
22 transactions and not around private company
23 data.

24 Q I've been -- we've been -- I've been asking a
25 few questions that draw on the BC consultation

1 document which concluded -- that consultation
2 progress we heard earlier which concluded the
3 spring of 2020. And just to close off on that
4 there's two further documents.

5 MR. MARTLAND: Madam Registrar, I appreciate I'm
6 keeping you hopping. Tab 15 and, after that,
7 tab 16.

8 Q And this starts with an email. And if we go
9 down a little bit, Mr. Dent, at the bottom there
10 we see an email from you to Mr. Primeau and some
11 others with the provincial government, I
12 believe. If we turn over to page 3 of this
13 document. And, Mr. Dent, is this the -- am I
14 right to say this is a submission that's made by
15 Deloitte dating to April 30th of this year to
16 the federal consultation process?

17 A (PD) It is, yes.

18 MR. MARTLAND: I'll ask, please, that tab 15 become
19 the next exhibit, Mr. Commissioner.

20 THE COMMISSIONER: Very well. 284, I think.

21 THE REGISTRAR: Next one -- 285, Mr. Commissioner.

22 THE COMMISSIONER: Thank you.

23 **EXHIBIT 285: BC Beneficial Ownership**
24 **Consultation Submission, Deloitte (Peter Dent),**
25 **2020 (redacted)**

1 MR. MARTLAND:

2 Q And what I'd like to do next is ask Mr. Cohen
3 really a parallel question using tab 16. And I
4 think the format that we have these documents is
5 that we also have the covering email, so to
6 speak. So we see an email from Sasha Caldera
7 enclosing, if we turn to page 2, the letter date
8 of March 13, 2020.

9 Mr. Cohen, is this the submission made to
10 the provincial government from the End
11 Snow-Washing Coalition? You're muted, sir.

12 A (JC) Yes, it looks like it. Yes.

13 Mr. Martland: So I think, Mr. Commissioner, if I
14 could ask this please become exhibit 286.

15 THE COMMISSIONER: 286.

16 THE REGISTRAR: 286.

17 **EXHIBIT 286: BC Beneficial Ownership**
18 **Consultation Submission, TI Coalition, 2020**
19 **(redacted)**

20 MR. MARTLAND:

21 Q Mr. Taggart, you've been hearing us speak about
22 the province of British Columbia and getting a
23 sense of efforts that are underway here. From
24 your point of view -- you've spoken already
25 about some different parts of the world. We'd

1 appreciate you speaking to lessons that Canada
2 and British Columbia can take from other
3 jurisdictions that you think are relevant to our
4 consideration of a BOT register?

5 A (CT) Absolutely. Sorry. Can I just check that
6 you can hear me okay? The -- I switched
7 microphones.

8 Q Yes.

9 A (CT) Yes. Well, the UK is a great example, and
10 not because it does everything right but because
11 the approach they've taken was both an open and
12 an iterative one. And so it provides numerous
13 lessons about how do to beneficial ownership.
14 And, you know -- so, firstly, they've collected
15 this structure data. They don't ask people to
16 just provide documents or things like that.
17 They collect structured data. They also have
18 made it -- they made it public from day one.
19 They've got a good technology operation there
20 and they've been -- they worked hard to make
21 sure that this was -- even aside from the legal
22 side that Companies House worked hard to make
23 sure that this would work for the -- both the
24 companies submitting information and for people
25 needing to get that information. So -- and

1 similarly at the legal side. You know, one of
2 the things that the UK government did right from
3 the beginning was understand two critical
4 aspects. One is that they won't be able to on
5 their own just get all the answers right. This
6 isn't something you can just pluck out of the
7 air. Some of these are tricky questions.
8 Tricky practical questions, tricky legal
9 questions. And, you know, what do we do about
10 sort of unincorporated entities, arrangements,
11 things like this. There are some challenges
12 issues here.

13 Some of them are ones which are tricky both
14 in the conceptual and practical issues, things
15 like verification and validation and so on. So
16 what they did, I think they did -- firstly they
17 took that first step. They were the first in
18 the world and that takes, you know, both
19 commitment and courage, you know, not because
20 they were doing something that was -- you know,
21 took courage to do insofar, but just being the
22 first in the world to do that.

23 And then they approached that by saying, we
24 will also do this in public. And so they've
25 done numerous consultations talking about the

1 different options. At every stage civil society
2 has been involved to get their feedback and
3 business and data users and so on. And over the
4 last -- you know, and one of the things they did
5 which they took a deliberate decision to do was
6 to put as much in secondary legislation as they
7 could so that -- knowing that they would make --
8 that they wouldn't get it right the first time,
9 and whether it's things like penalties or
10 thresholds or ways of collecting the data or the
11 scope, if it could go in the secondary
12 legislation, it would go in the secondary
13 legislation. And so -- and that's allowed them
14 to iterate relatively easily. Obviously it's a
15 lot easier to pass secondary legislation.

16 And then finally they said, we genuinely
17 want people to use this data. And so they made
18 it available not just for free on the web. You
19 know, firstly they made it available on the web,
20 but then they made it available for free on the
21 web. And then they also made it available as
22 open data. So anyone can download this and
23 incorporate it, and people incorporated it. You
24 know, they did -- Global Witness, ourselves,
25 others did analysis on it, identified problems

1 with it. And when then we told them the
2 problems, their reaction was great; thank you
3 for telling us; now let's work out together how
4 we can fix some of these problems.

5 Numerous companies, thousands and thousands
6 of companies are using this data in their due
7 diligence work flows and in investigation
8 systems because the real power comes when you
9 combine this sort of data with other data to
10 find that -- with contracting data, for example,
11 with sanctions data, with data from other
12 reports so that you can find anomalies, you can
13 find connections which you would otherwise hide.
14 You could find patterns of people using
15 corporate structures or those sorts of things.
16 And we've seen this happen again and again.

17 But I -- they have been quite rightly
18 criticized for not -- first of all, not
19 validating and then not verifying, and they're
20 now working towards that. So every single step
21 of the way they've taken an approach of, we
22 won't get everything right, but we are
23 determined to do so in an iterative way, and
24 have worked with every single stakeholder in
25 order to do that.

1 complete new invention -- that's the worst
2 thing -- but because you've looked at theirs,
3 identified issues, identified ways it could be
4 done better and improved.

5 Q A deliberate departure from the mould that was
6 cast.

7 A (JC) Absolutely.

8 Q And so with a view to getting a sense of how
9 some other jurisdictions have been coming to
10 grips with these issues, I'd like to go over a
11 few documents.

12 MR. MARTLAND: And, Madam Registrar, so you know
13 what's coming, I'll go to tab 11 and, after
14 that, 12 and 13.

15 Q Tab 11, Mr. Taggart, when it comes on screen
16 you'll recognize the OpenCorporates report from
17 2020 "EU Company Data: State of the Union."

18 A (CT) Absolutely.

19 MR. MARTLAND: I'll ask, please, that in this
20 document be marked as next exhibit.

21 THE COMMISSIONER: Very well.

22 THE REGISTRAR: Exhibit 287, Mr. Commissioner.

23 THE COMMISSIONER: Thank you.

24 **EXHIBIT 287: OpenCorporates, EU Company Data:**
25 **State of the Union 2020 - How Poor Access to**

1 **Company Data is Undermining the EU, 2020**

2 MR. MARTLAND: And if we go, please, to page 4.

3 Q Under the executive summary and simply glancing
4 along here in description of official company
5 data in the EU some of the highlighted points
6 here: poor overall performance exemplified by
7 Spain at zero Austria at zero, Italy at 10;
8 little improvement over the past eight years; no
9 progress over the last three; EU single market
10 undermined by poor access.

11 And then we see within that, if I could just
12 underline this point, second sentence:

13 "Yet access to the fundamental business
14 dataset - companies and company
15 ownership - is restricted not to those who
16 most need to use it, but to those who can
17 afford to pay the very considerable cost,
18 undermining both the practice and the
19 concept of the single market."

20 I'm just reading on to touch on some other
21 bullet points here. Illicit activity is free to
22 proliferate whilst access is poor. Corporate
23 accountability deficit widens. That says
24 it's -- it notes that that's powered by the EU
25 COVID-19 financial aid. And efforts to restrict

1 access are persisting, indeed growing in some
2 states. Finally, the open data directive is an
3 opportunity for improvement despite efforts to
4 undermine it.

5 So that really compresses a great deal of
6 information from this report but some of the key
7 holdings from this analysis of the EU company
8 data.

9 A (CT) Yes, it does. And this was about company
10 data in general. And I've actually done -- we
11 did some research last week on using the
12 BC company register in a wider sense, and I can
13 share that with you when it's convenient.

14 Q I don't think I can resist that because that
15 sounds something new and relevant, so why don't
16 you launch into that right now. Thank you.

17 A (CT) Well, one of the things of course is that
18 what we're talking about when we're talking
19 about beneficial ownership is who actually --
20 you know, is who ultimately controls and
21 benefits from the companies, but actually what
22 even companies exist is the starting point.

23 At OpenCorporates we collect official
24 company information from registers around the
25 world, around about 135 or so at the moment, and

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1 we pull that in one data set and it's used by
2 over 5 million people at the moment: law
3 enforcement, journalist, tax authorities,
4 anti-corruption investigators, [indiscernible]
5 professionals, investigators, asset recovery
6 lawyers, you name it.

7 And, you know, just as a -- in preparation
8 for this session I thought I would go back and
9 revisit and look at how easy or difficult it was
10 to get information from the British Columbia
11 company register. And so last -- on Friday last
12 week I, as a benchmark, if you like, I looked at
13 the -- I looked for a company in the UK, an
14 arbitrary company, a Microsoft company in the
15 UK, and actually it took me less than 30 seconds
16 to get the information on that company. And not
17 just what the company was, when it was
18 incorporated but also what the -- who the
19 directors were, who were the previous directors,
20 who the beneficial owners were. In fact in that
21 case they refer you to Microsoft Corporation,
22 which is the parent company, but also every
23 single filing, including financials, all
24 available. And I got that information and could
25 download any one those for free without even

1 having to register in about 30 seconds.

2 So I didn't necessarily expect BC to be the
3 same, but I hadn't -- to be honest I hadn't
4 accepted it to be quite so challenging as it
5 was. And, you know, bear in mind I -- you know,
6 I've spent a fair chunk of the last ten years
7 looking at company -- navigating my way around
8 company registers and understanding them.

9 So, first of all, I went to the company
10 register and, you know, we score it -- by the
11 way, we score it zero out of 100 on the Open
12 Company Data Index. That's a measure of how
13 open -- how accessible company data is in every
14 jurisdiction in the world.

15 Q And if I can just make sure I have that right.
16 When you say we score it at zero, those are
17 scores that include not just simply nation by
18 nation but British Columbia as a jurisdiction on
19 its own scored it at zero?

20 A (CT) Absolutely. Yes. And to get any points
21 you actually just need to make the register
22 searchable without registration or fee. So
23 Canada actually averages -- across Canada,
24 including the federal register, averages 16 out
25 of 100, which is poor. The EU averages in the

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1 20s. Similarly, the US. Some countries score
2 80, 90 even.

3 But -- so we'd scored it zero out of 100.
4 And firstly I just wanted to make sure that we
5 absolutely were scoring it right. So I went to
6 the BC company register to try to test that
7 system, try to get information on one arbitrary
8 company and -- even if I had to register or pay
9 for the information just to see how easy it was
10 to actually find out information about the
11 company. Ideally the directors and shareholders
12 the financials too, but just -- let me just see
13 how far I could go.

14 And, first, it's a really convoluted
15 experience. You go to one page, it links to
16 another, you go to another page and it's really
17 not clear exactly where you're supposed to be
18 searching and what you're supposed to be doing.
19 But finally I got to a page and it said okay,
20 you need to be a registered customer or you can
21 use -- or you can use credit cards. And to be a
22 registered customer it says you require an
23 opening deposit of 100 Canadian dollars. It's
24 required from customers with Canadian bank
25 accounts to open a new account. For US or

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1 international customers without a Canadian bank
2 account a minimum deposit equivalent to 150
3 Canadian dollars is required. The account will
4 be activated once the initial funds have been
5 deposited. An appropriate authority must sign
6 the application and applicable EFT forms.

7 And so what that seemed to be saying to me
8 is before you could even search to see if a
9 BC company exists, let's say you are considering
10 doing business with a BC company that approached
11 you to be a client of yours or you're doing a
12 law enforcement investigation, that before you
13 can even see if that company exists, never mind,
14 you know, any of the other information, you have
15 to pay \$150. And not just to pay \$150, you have
16 to put \$150 by doing a wire transfer and then
17 check if it's been received. And then -- only
18 then, a few days later, can you actually get an
19 account and only then after having that account
20 can you do this.

21 So there was a section called "credit card
22 products," but this just appeared to be making
23 filings on behalf of companies or even
24 incorporate them, but not for searching. So it
25 seemed that if you've got a credit card, you can

1 incorporate a company but you can't actually
2 find out if a company exists, still less who is
3 behind it.

4 So if I was listening to this hearing today
5 and I was a criminal, I'd be thinking that
6 BC companies are definitely good option for
7 companies for money laundering because frankly,
8 you know -- if I'm overseas, that is, because
9 frankly the chances of a UK law enforcement or
10 still less a Kenyan investigator or journalist
11 or law enforcement anywhere, you know, actually
12 getting to passing through all of these hurdles
13 would seem to be -- would be pretty remote and
14 they would probably give up.

15 I'd spent about 20 minutes, half an hour
16 doing that. But I don't give up easily, so I
17 tried to call them, and it was about 8 a.m. and
18 there was nobody was there. There was an
19 answering machine saying there would be someone
20 there for 9 a.m. So I called them to see if I
21 was missing something. I didn't want to be
22 misrepresenting it. And I spoke to this person.
23 You know, I called again at 9 a.m. and spoke to
24 this person they said well, it's not actually
25 possible to get company information on the

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1 register online unless you've got an account,
2 one of the special accounts; and there is a site
3 called OrgBook -- which is sort of, as I
4 understand it, an experimental site for testing
5 out blockchain and similar systems -- there is a
6 site called OrgBook, but it doesn't really have
7 any information apart from just a company name
8 and an incorporation date and so on, so I think
9 your best bet is to use, you know, an agent; you
10 know, I can give you the name of this company
11 that does it; they sometimes take a couple
12 of days to get back to, if you leave a number;
13 they might take a couple of days to get back to
14 you and -- or you could -- if it's not urgent,
15 you could write a letter to the registry
16 enclosing a cheque for 10 Canadian dollars, and
17 then they would post the information back.

18 So it's -- you know, so what we have here is
19 one where just this basic information is
20 incredibly hard to find and I genuinely can't
21 think of any reason why you would want to make
22 it so difficult to do. And when I looked on the
23 company register's, you know, news sites and so
24 on, I wondered if it was -- you know, I wondered
25 if they were being starved of money or they

1 didn't have enough money and so on, but they
2 seemed to be making improvements, all around
3 making it easier to register and to be able to
4 register different types of companies, nothing
5 about making access to this data.

6 And maybe I wondered if it was -- I wondered
7 if it was about making money, that this was a
8 profit -- you know, essentially treated as a
9 profit-making venture. And I spent about
10 another hour looking for the accounts, the --
11 any KPIs that they kept, anything like that,
12 even going through ministry accounts to try to
13 find that, and I could not find a budget for the
14 BC company register.

15 So all in all, you know, I think there's a
16 tremendous opportunity around beneficial
17 ownership in BC not least because of this
18 commission, which is truly exciting. But there
19 is a long, long way to go because we're not --
20 you know, I've been to -- seen many, many
21 developing world countries their registers, you
22 know, Myanmar, you know, South American
23 countries, all sorts of places where the --
24 accessing the basic company information is much,
25 much easier than that, and that's a real shame

1 and it really does create a great fertile ground
2 for bad actors.

3 Q Well, thank you for having undertaken that
4 research and sharing it with us.

5 MR. MARTLAND: Madam Registrar, I don't think we need
6 this document displayed at present.

7 Q Mr. Dent, I saw you unmute. I don't know if I'm
8 reading into your decision to unmute, or if you
9 had a comment.

10 A (PD) My only -- well, of course I agree with
11 what Mr. Taggart has talked about. The
12 unfortunate consequence of the requirement and
13 the -- sort of the lack of uniformity across the
14 jurisdictions in Canada and how you can access
15 this data and what data you can access and how
16 easily it can be accessed is that it's created a
17 private sector opportunity where companies
18 manage this on behalf of their clients. And
19 that -- and so when people talk about the costs
20 or the burdens of business -- of registering or
21 completing beneficial ownership information,
22 many times they lose sight of the real
23 consequences that we're incurring right now for
24 private companies in terms of just doing
25 standard due diligence around who they're doing

1 business with and how incredibly difficult it
2 is. And the cost of doing it, because they need
3 to go to a private sector entity to gather all
4 of this information on their behalf, is
5 extraordinarily more than what the cost of just
6 having that information or sharing that
7 beneficial information upfront would be.

8 So that many times is lost in that
9 discussion, but Mr. Taggart has done an
10 excellent job at basically giving a real world
11 example of how that cost to doing business in
12 British Columbia is a real consequence here.

13 Q Ms. Johnson or Mr. Cohen, anything to add on
14 this topic before I move to another report?

15 A (JC) Yeah. I'll just chime in. And again thank
16 you to Mr. Taggart for doing such a thorough,
17 time-consuming experiment on how to -- in how to
18 register BC's registry or lack thereof.

19 And also I agree completely with Mr. Dent's
20 comments on the burden to business.

21 This is -- if we go back to the conversation
22 of where this -- of where the beneficial
23 ownership transparency conversation is at in
24 Canada, if we look at it from the business
25 perspective, it's often discussed as we're not

1 at a point of if we should have a registry, but
2 when and what type of registry. This is -- you
3 know, I'm quoting here from many conversations
4 I've heard. And there's this idea that it's all
5 looking from just a large institution point of
6 view. As long as our banks have access to this
7 information that's fine. But we have to think
8 about how much of a level playing field is
9 created by creating accessible information, as
10 Mr. Taggart points out.

11 So, for example, there was an update in the
12 Gazette that the PCMLTFA will be updated so that
13 other non-designated financial persons and
14 businesses have obligations on beneficial
15 ownership reporting. So that's every
16 accountant, every real estate agent, money
17 service business, precious metals as well.
18 Sure, the large accounting firms and the large
19 real estate agencies can have access but once we
20 go down to individual accountants and real
21 estate agents, that's becoming a burden on them
22 if they have to go through the kind of hoops
23 that Mr. Taggart has expressed.

24 If we go to small-, medium-sized enterprises
25 within Canada who have to fill out multiple

1 forms to different banks, to different insurance
2 agencies, different accountants every time that
3 they want to onboard as a client to establish
4 their beneficial ownership information, that's a
5 burden to them, as opposed to uploading that
6 information one time in a publicly accessible
7 registry of beneficial ownership. That's also
8 the levelling of the playing field for those
9 small-, medium-sized enterprises to be able to
10 conduct their own due diligence as opposed to
11 having to outsource that service to businesses
12 who would pay -- who would cost a lot of money.

13 We're seeing a lot of -- we're hearing
14 examples in headlines right now during COVID-19
15 of predators trying to create false contracts,
16 to create false clients, to create false
17 business opportunities that were already
18 occurring before COVID-19, but in everyone's
19 desperation right now that's being exploited.
20 So why should large companies who have in-house
21 counsel and access to due diligence be the only
22 ones being able to access that information as
23 opposed to having to go through the hurdles that
24 Mr. Taggart has pointed out?

25 And so we just see more and more on even the

1 business side of having this. And then finally,
2 if we even look at -- speaking of Mr. Taggart
3 being in the UK, there's announcements that
4 started last week of trade negotiations going on
5 between Canada and the UK and even trade
6 negotiations between ourselves and the European
7 Union. How long it going to be before all of a
8 sudden our partners say, why is it that Canadian
9 companies have an unfair advantage in looking at
10 the beneficial ownership information of our
11 companies to conduct their business but our
12 companies don't have that same advantage to look
13 at their companies?

14 So going back to the conversation on where
15 are we moving internationally. If more and more
16 countries start putting in that access to
17 beneficial ownership information within trade
18 deals, we all of a sudden become a less
19 opportune business partner to conduct trade
20 negotiations with.

21 Q Ms. Johnson?

22 A (MJ) Yeah. No, this is actually a really useful
23 discussion about the status quo and where we
24 are. And I just wanted to really briefly add to
25 those excellent points and say that even for a

1 small business owner or a consumer who wants to
2 take a business to small claims court, for
3 example, which is intended to be cheap and
4 accessible and not complex, just finding out who
5 the legal entity is that you need to sue behind
6 the business name, you might end up having to go
7 through the kinds of hurdles that Chris Taggart
8 is talking about or at the very least maybe go
9 through an expensive paywall just to get basic
10 information about the corporation, let alone
11 beneficial owner information.

12 And indeed, as we discussed earlier, a lot
13 of the risks are shifted onto creditors and
14 consumers and others. And if you can't even
15 find out the name of the -- the actual legal
16 name of the company, that's a real disadvantage.

17 Q Mr. Taggart, before you took us into your
18 Friday research undertaking I was working my way
19 through a few documents. I'd like to complete
20 that little task.

21 MR. MARTLAND: If we could please look at tab 12,
22 Madam Registrar.

23 Q It's a further 2020 OpenCorporates report, this
24 dealing with US company data. And I won't --
25 first I'll just pause to ask do you recognize

1 that?

2 A (CT) Yes.

3 MR. MARTLAND: I'll ask that please become the next
4 exhibit, Mr. Commissioner.

5 THE COMMISSIONER: Thank you.

6 THE REGISTRAR: Exhibit 288, Mr. Commissioner.

7 THE COMMISSIONER: Thank you.

8 **EXHIBIT 288: OpenCorporates, US Company Data:**
9 **State of the Union 2020 - How Accessible is**
10 **Official Company Register Data in the US, 2020**

11 MR. MARTLAND:

12 Q And just to summarize one part of it that the
13 United States scores -- although there's
14 differences. For example, Washington State
15 scoring well, Illinois and Delaware and others
16 scoring poorly. And on average about 31 out of
17 100, which one could compare to China at 29 out
18 of 100 but below Russia at 40 out of 100. Do
19 those sort of numbers sound accurate from this
20 report?

21 A (CT) They do.

22 MR. MARTLAND: If I could please look next to tab 13.

23 Q Mr. Taggart, I'll ask you also. This is a
24 document from March 2019 and it's from the UK
25 Department For Business, Energy and Industrial

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1 Strategy called "The Review of the
2 Implementation of the PSC Register." Do you
3 recognize that report?

4 A (CT) I do.

5 MR. MARTLAND: I'll ask this please become
6 exhibit 289.

7 THE COMMISSIONER: Very well. Thank you.

8 THE REGISTRAR: Exhibit 289.

9 **EXHIBIT 289: UK Department for Business, Energy**
10 **and Industry Strategy Review of the**
11 **Implementation of the PSC Register, March 2019**

12 MR. MARTLAND:

13 Q And in essence, or in a simple way, this deals
14 with the UK's PSC, meaning people with
15 significant control, register created in 2016,
16 the report done about three years into the
17 lifespan of it considering overall levels of
18 engagement, effectiveness, the financial costs
19 of the PSC register, compliance and the like?

20 A (CT) It does, yes.

21 Q And what does this report tell us about, for
22 example, the question of compliance costs with
23 the PSC register in the UK?

24 A (CT) Well, I think it's -- you know, it's clear
25 from the report and also from experience that

1 we've had in talking to many, many different
2 organizations that the cost of compliance is
3 incredibly low. It's effectively for a simple
4 company -- that's what I talked about before,
5 you know, a smaller, medium enterprise that just
6 has the shareholders and directors, the
7 beneficial shareholders are the same, is very
8 simple and it's a tick box exercise more or
9 less. It adds maybe five minutes to the -- you
10 know, your accountant will submit this and it
11 maybes adds five minutes to the process. Of
12 course it adds a little bit and there's
13 complexity when you have really complex
14 companies, but, you know, that is the trade-off
15 they make. They've introduced that complexity
16 and that's the trade-off.

17 And I think that the -- it's really clear
18 about the -- you know, there have been
19 significant benefits, and I think it's also
20 clear that this is a journey and that they have
21 listened. And so, you know, one of the things
22 that's being worked on at the moment is issues
23 about -- you know, they've already introduced a
24 lot of stuff around validation and they're now
25 working on issues around verification. So I

1 think that it's an excellent summary of both the
2 fact that this isn't an overwhelming -- you
3 know, an overwhelming burden.

4 And actually just to back up what Mr. Cohen
5 said, you know, this is information that every
6 business -- when you are thinking of doing
7 business with somebody else or maybe you're
8 thinking of working for another company, you
9 know, this is the information that you need in
10 order to make an informed decision about that.
11 And so by making that more difficult -- if I was
12 a small company, you know, let's say, even
13 outside of -- in Washington State and thinking
14 of doing business with a BC company, you know,
15 that's -- or another company in another part of
16 Canada, those sorts of frictions, you know,
17 those sorts of difficulties are things which
18 really cause issues for SMEs. And frankly they
19 often give up. They say, we're not going to do
20 business with that company, or we're not going
21 to do due diligence; let's just take a fly on
22 it; they seem okay. And that's not something we
23 want them to be doing because actually, you
24 know, we don't want them to be fleeced out of
25 money by fraudsters or to be inadvertently doing

1 business with sanctioned companies or, you know,
2 any of the other -- the downsides.

3 So I think that the -- it's really clear
4 that there has been real benefits and that
5 the -- both the cost has been low, but also
6 the -- you know, there was a -- I remember I was
7 at an open government partnership event on the
8 pound when the UK government announced that they
9 were going to be doing this register. And there
10 was someone from the United States basically
11 saying, this will never see the light of day;
12 you will never ever have a public beneficial
13 owner register; I guarantee it; it's going to be
14 too difficult to do; it's going to be too
15 expensive; you will never see -- it will never
16 see the light of day.

17 And actually it wasn't easy, but it's not
18 something like -- I don't know -- speech
19 recognition or, you know, any of those really
20 hard computing things. This is a thing that can
21 be done and it is being done and we are seeing
22 significant benefits from it.

23 Q Thank you.

24 MR. MARTLAND: Madam Registrar, I think we can take
25 down that document.

1 Q Mr. Dent, we were touching on the question about
2 the costs of compliance, and one question that
3 occurred to me is the costs or the consequences
4 in particular to financial institutions of
5 compliance. If you could comment on that,
6 please.

7 A (PD) Sure. So the issue in Canada I just want
8 to give a little bit of context to this. So
9 for -- the issue in Canada is -- at a high level
10 is the way we've structured our anti-money
11 laundering compliance regime. So there's a
12 great deal of onus placed on financial
13 institutions in Canada and, now, it's
14 understandable in that -- it's that they collect
15 a lot of information around transactions, so
16 they are a unique position to identify
17 transactions that are of a higher risk to the
18 government. But for better or worse in Canada
19 what we've decided is in essence we've offloaded
20 responsibility for anti-money laundering or for
21 money laundering detection to the financial
22 institutions. And as a result of that, they are
23 spending hundreds of millions of dollars a year
24 in order to comply. And the reason that the --
25 one of the reasons that they spend hundreds

1 of millions of dollars a year to comply with our
2 anti-money laundering legislation in Canada is
3 that when Canada decided that it would put in an
4 anti-money laundering regime that required
5 financial institutions to identify or identify
6 to them or to FINTRAC higher risk
7 institutions -- or higher risk transactions, it
8 did not put into place a system that would allow
9 them to more easily access the information
10 around who they were conducting business with;
11 who were the individuals behind those
12 transactions.

13 And so therefore -- and as I've sort of
14 mentioned earlier, I talked about the lack of a
15 single point of reference with respect to
16 beneficial ownership transparency in Canada and
17 for all of the reasons I enumerated earlier.
18 FIs are left with a system where in many
19 respects requires a personal attestation of
20 their clients to basically identify themselves
21 as the beneficial owner.

22 Now, for the vast majority of Canadians
23 that's fine. The vast majority of Canadians are
24 honest, have no reason to hide their beneficial
25 ownership of a corporate entity or private

1 company. But for those that wish secrecy for
2 nefarious reasons, they may not articulate that
3 information accurately to the financial
4 institutions or after setting up a company,
5 taking in their articles of incorporation, they
6 may sell that company to a third party but never
7 update the corporate record with respect to
8 that. So they become, in essence, the nominee.
9 They weren't always the nominee and originally
10 they may have been the shareholder, but they
11 become the nominee and so therefore the
12 financial institution is not necessarily aware
13 of that going forward.

14 So the value -- it's a long way of putting
15 it, but basically the value to the financial
16 services industry of, you know, an accurate
17 dependable, independently verified record of
18 beneficial ownership is that they would have
19 that single source to be able to go to to do
20 their due diligence requirements under the money
21 laundering legislation in Canada. And it would
22 create an efficiency within the industry but
23 also for Canadians in general in that even when
24 I -- you know, when I go into a financial
25 institutions to set up a company, there is a

1 burden put on -- placed on myself in terms of
2 all of the documentation, all of the forms that
3 I need to sign, all of the information I must
4 provide to them so that they can become
5 comfortable under the legislation in Canada that
6 I am who I say I am, and I am the beneficial
7 owner of this entity.

8 So it would, in effect, create an efficiency
9 that we don't currently see across Canada. I'm
10 not saying it would be an easy task, but I think
11 it would be a worthwhile one.

12 Q I'd like to turn to some of the specific issues
13 in thinking about the design of and creation of
14 a BOT registry. And maybe I'll start,
15 Ms. Johnson, if I might, with you. If you'd
16 prefer to defer on to someone else, I don't
17 think we have a shy group of people here, so ...

18 But the question would be this, to start
19 with the topic of threshold. So we've heard
20 reference to a 25 percent versus a 10 percent
21 ownership stake, I suppose, as being what
22 triggers someone's obligation to have their
23 information included on a register. Do you have
24 views on how we should be thinking about that
25 question of threshold of ownership amount?

1 A (MJ) Yeah. And I guess before I get to the
2 specific question about ownership of, you know,
3 voting shares I wanted to kind of take one step
4 backward and just refer back to a conversation a
5 little bit earlier that we had, and Chris
6 Taggart was talking about ownership and control
7 and benefit and really understanding, you know,
8 when we think about what is a real definition of
9 beneficial ownership that would function well to
10 capture the people that we're thinking of.

11 And so I guess I just wanted to say we do
12 need to think more -- we do need to think
13 carefully about a flexible and open-ended
14 definition that would capture a whole variety of
15 owners and controllers and business types. I
16 think, as Chris said, most companies are quite
17 simple, so the shareholders are simply the
18 owners. But you get to more complex
19 corporations. I know Peter talked about this as
20 well. It is more accurate to say that
21 shareholders enjoy a specific bundle of rights.
22 These would typically include voting rights,
23 right to dividends and a proportion of assets
24 and it gets less accurate to call them "owners"
25 as the corporation becomes more complex and the

1 number of shareholders is bigger.

2 And in fact in a larger -- the larger the
3 corporation, the greater the control that a
4 director is likely to exert over a corporation.
5 This is particularly the case in widely-held
6 corporations with a high number of shareholders
7 and poor sort of collective action by
8 shareholders over the corporation. So it's
9 really important to make sure that directors are
10 listed as beneficial owners. Corporate
11 directors.

12 Q If I can just pick up on that. I hear you, I
13 think, quite defensively arguing with the
14 question in the sense of saying it's not -- it
15 shouldn't simply be a matter saying 10 percent,
16 25 percent ownership of shares or number of
17 shares percentage, but rather what should we be
18 thinking about when we're trying to get to the
19 question of who controls and who benefits from
20 that company. That's what we need to know
21 rather than some mathematical cut-off or
22 accounting of proportion of shares.

23 A (MJ) That's right. That's right. So I think --
24 I mean, really when we go into definitional
25 issues, we do need to think more broadly about

1 capturing sort of the whole variety of
2 characters that might own or control or benefit
3 from a corporation.

4 I would say that with regard to the
5 percentage of owning shares held and the
6 definition, reducing the current ownership
7 threshold of 25 to 10 would be something I would
8 support. There is a risk -- I think Chris
9 Taggart mentioned this -- that a lower
10 25 percent share would still be significant -- a
11 significant share. A 10 percent threshold would
12 have the benefit of capturing information on a
13 larger number of company owners, and it's not
14 clear there are any compelling negative
15 consequences.

16 Again, the information that's come out of
17 the UK has shown that it's actually quite a
18 light reporting burden to figure out who the
19 beneficial owners are. So for the vast
20 majorities of companies who hold maybe one or
21 two or three directors and shareholders, it
22 would be a really straightforward matter to
23 lower that threshold and it wouldn't increase
24 the reporting burden very much.

25 So I would say the complexity -- more

1 complex business structures may -- that lowering
2 that threshold may create a greater reporting
3 burden, but in all likelihood that would be for
4 larger corporations that could manage that
5 reporting burden and much less likely for small
6 or micro businesses.

7 Q Do other panel members have views on that
8 question, first -- the first part of it in terms
9 of whether it's beyond simply percentage of
10 voting shares, but secondly on the 10 versus 25
11 versus some other cut-off number for the
12 threshold to qualify as a beneficial owner for
13 the purpose of a register?

14 A (JC) Yeah, I might chime in here and just say
15 often the 25 percent number is brought up but
16 it's something of an arbitrary number. It
17 was -- and maybe Mr. Taggart can even correct
18 me or fill in the blanks on the history of this,
19 but I think it just kind of came up as a target
20 number in the initial discussions of the PSC and
21 it's been challenged or kind of questioned in a
22 number of venues even in the US by law
23 enforcement there as to why 25 percent, and
24 there's even other registries that go lower than
25 10 percent.

1 So I think having that 25 percent as a
2 starting point, we should maybe even think about
3 just dismissing it and look at what is the best
4 option as it's quite arbitrary. Now, if we even
5 look at what to publish, if we look at other
6 registries, like, say, in Sweden, they not only
7 publish -- they do use the 25 percent threshold,
8 but then they also publish what percentage an
9 owner has whether -- after 25 percent, whether
10 it be 26, 30, 80 percent. So there's that
11 greater distinction. And within the UK persons
12 of significant control registry is put into ban,
13 so if you're 25 to 50 or 50 percent over. So
14 there's even more identification there.

15 (PD) The only comment I would make, Brock,
16 is that the uniformity around what percentage is
17 landed upon is very, very important. So, for
18 example, we cannot have the Land Owner
19 Transparency Act set a threshold at 10 percent
20 where it's reportable, and then the federal or
21 provincial corporations registry, BC private
22 companies registry, set it at 25 percent. It
23 would defeat the purpose of creating a
24 Pan-Canadian publicly available registry and
25 just add to the further complexity of having to

1 parse data that is not consistently collected
2 across the country. So that's my only comment
3 on the topic.

4 Q I suppose that gives rise to the double-edged
5 sword of a high common denominator or the lowest
6 common denominator in the sense that a standard
7 could be diluted because it needs to be adopted
8 across a number of jurisdictions, potentially.

9 A (PD) It's the reality of the Canadian system.
10 It's a federal system and it's a federation and
11 therefore we have, you know, 13 jurisdictions
12 that must be navigated and we need uniformity
13 for this sort of regulatory or legislative
14 environment to work.

15 MR. MARTLAND: Mr. Commissioner, this might be a
16 useful moment for the break, please.

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

19 THE REGISTRAR: This hearing is adjourned for a
20 15-minute recess until 11:31 a.m. Please mute
21 your mic and turn off your video. Thank you.

22 **(WITNESSES STOOD DOWN)**

23 **(PROCEEDINGS ADJOURNED AT 11:16 A.M.)**

24 **(PROCEEDINGS RECONVENED AT 11:30 A.M.)**

25 THE REGISTRAR: Thank you for waiting. The hearing

Mora Johnson (for the commission)
James Cohen (for the commission)
Peter Dent (for the commission)
Chris Taggart (for the commission)
Exam by Mr. Martland

1 is now resumed. Mr. Commissioner.

2 THE COMMISSIONER: Yes. Thank you, Madam Registrar.

3 **MORA JOHNSON, a witness**
4 **for the commission,**
5 **recalled.**

6 **JAMES COHEN, a witness**
7 **for the commission,**
8 **recalled.**

9 **JAMES DENT, a witness**
10 **for the commission,**
11 **recalled.**

12 **CHRISTOPHER TAGGART, a**
13 **witness for the**
14 **commission, recalled.**

15 MR. COMMISSIONER: Yes, Mr. Martland.

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

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

18 Q Panel members, I'm going to move through a
19 number of topics and maybe move our way through
20 these things, and then a number of my
21 colleagues, counsel for other participants, have
22 questions to ask you.

23 So the first question I have has to do with
24 the question of the scope of a database. And I
25 would welcome you in approaching these questions

1 to come in, if you will, at a normative level
2 what you think should be the way that a registry
3 is set up and put into place, but bearing in
4 mind the context here obviously is looking at
5 the province of British Columbia within the
6 Canadian context.

7 So with respect to the scope of who's
8 included in a beneficial ownership registry,
9 should it be all companies; should it be other
10 legal entities, such as trusts, partnerships;
11 are there particular issues or complications
12 that arise, for example, for trusts that don't
13 arise for companies?

14 Maybe I'll start with Mr. Taggart and then
15 work through other panel members with that.

16 A (CT) Yes. I'll try to be brief. It definitely
17 should include all companies, including
18 private -- including public companies.
19 Generally public companies have to disclose more
20 information than private companies and I see no
21 reason why they shouldn't be and many, many,
22 many reasons why they should make the same level
23 of disclosures. Of course, you know, there
24 would be a de minimus level, whether it's
25 10 percent or whatever that would be, where they

1 wouldn't have to update every time, a small
2 shareholder or whatever. But, you know,
3 1 percent in a public company is a -- you know,
4 is a huge amount. So I don't think that there's
5 any reasons why public companies should be
6 excluded, and increasingly we're seeing IPO for
7 it and other aspects around public companies and
8 around the companies that they own as well being
9 used for problematic purposes.

10 In the scope of -- in terms of legal
11 entities, so those things with a distinct legal
12 personality, whether they are traditional
13 companies, even unlimited liability companies,
14 if an unlimited liability company is owned by a
15 limited liability company you get the -- you
16 still get the limited liability but without --
17 but in that sort of structure. So anything --
18 and there are lots of different types of
19 companies. Limited partnerships and so on. In
20 the US you have LLCs, which are essentially a
21 type of partnership as well.

22 So those things which have a distinct legal
23 entity, absolutely. It gets a little bit more
24 difficult when you're talking about things that
25 are arrangements like trusts and partnerships,

1 particularly in a common law country where those
2 things can be created ad hoc, sometimes without
3 even any documentation by them. That doesn't
4 mean you can't deal with them, that we can't do
5 that, but it's somewhat of a different problem
6 than the -- than those that are distinct legal
7 entities and particularly those distinction
8 legal entities that are registered in the
9 company register.

10 So I think we should be looking at those
11 separately. Certainly trusts have been used and
12 will increasingly be used for illicit purposes.
13 Charities have been too and foundations and so
14 on. But I think there's more -- probably a
15 little bit more work. My gut feel is that we'll
16 end up in a place where trusts are becoming less
17 and less common law entities and more, you know,
18 distinct entities as they start to be -- as we
19 start to realize that they are -- that there's
20 problems around their use and so on. But yeah,
21 I think I'll end there for the moment. Thank
22 you.

23 Q That's helpful. Mr. Cohen, if I might have to
24 you share your views on this question in the
25 BC context in particular. Should this be a

1 registry that goes beyond companies and would
2 also apply to trusts or partnerships or both
3 and/or should that happen at some future point
4 down the road, if not --

5 A (JC) Yeah. I would agree with Mr. Taggart's
6 perspective on this that at the moment private
7 and public companies should absolutely be
8 available publicly on a corporate registry and
9 LOTA, but the partnerships and trusts have their
10 own complications that I think still have yet to
11 be fully explored. So my recommendation there
12 is to initiate that exploration of what are the
13 complexities around trusts and look at things
14 around categorizations of the different trusts
15 and the very specific issues that are involved
16 with different kinds of trusts and, as opposed
17 to talk about trusts as one lump group, start to
18 parse them out as the more -- or as the easier
19 targets or the easier versions of trusts that
20 can be folded into such a registry.

21 Q Ms. Johnson or Mr. Dent, anything to add on that
22 topic? All right.

23 I'm going to move to the question of the
24 degree of public access to a database. And
25 we've heard already descriptions of different

1 ways that this information can be, if it is
2 collected up in one place, made available on an
3 very limited basis or, at one extreme, quite a
4 limited basis, really only on request, let's
5 say, of law enforcement or government
6 authorities. At the other end of the spectrum
7 really a very broad, unhindered public access to
8 the information.

9 Why don't I start with Ms. Johnson. Do you
10 have views about this question of who should
11 have access to data about the public -- the
12 beneficial ownership transparency registry sort
13 of database?

14 A (MJ) So I'm aware that there may be some privacy
15 issues that will arise with a public registry.
16 And, I mean, we can get into that now or a bit
17 later as you wish. But as a general rule I
18 think there's a lot of excellent policy reasons
19 for making the beneficial ownership information
20 public. I know Chris Taggart was talking a
21 little bit about the UK experience. When you
22 look at all of the rationales for actually
23 making corporations more transparent, you see
24 that a lot of them really relate to, you know, a
25 whole variety of actors in our system. We

1 talked about, you know, the banks and the trust
2 companies and people who have statutory due
3 diligence obligations.

4 There are also people who have -- may well
5 conduct due diligence as part of their
6 professional obligations even if they're not
7 required by statute, for example, lawyers. This
8 is something, you know, that should be
9 encouraged and to the highest degree, for
10 example, that clients are not actually on
11 sanctions lists and there's understanding of,
12 you know, who the true owner is of people
13 conducting complex financial transactions or
14 purchasing property, for example.

15 So there's a whole range of reasons why a
16 whole variety of government agencies, including
17 tax authorities, law enforcement, we talked
18 about public procurement and others would also
19 have an interest in easy access to beneficial
20 ownership information. So I think the arguments
21 are very strong for a public registry, in a
22 nutshell.

23 Q Any different views from any panel members?

24 A (PD) So, Mr. Martland, the -- so if we look at
25 the Land Owner Transparency Registry right now,

1 there are two levels of access or ostensibly one
2 that -- I think it's available as of today.
3 There are two levels of access available. And
4 the first is what they refer to as primary
5 identification information and that's what they
6 describe as available to any person. And "any
7 person" is defined as sort of a member of the
8 general public, such as yourself or myself, a
9 company conducting due diligence along the --
10 you know, along the lines of what Ms. Johnson
11 just referred to. But it also -- you know, it
12 refers to reporting entities such as financial
13 institutions, accountants, you know, real estate
14 dealers. Basically anybody that's a reporting
15 entity under the AML legislation in Canada.
16 That's "any person."

17 But the requirements of "any person" under
18 this legislation are dramatically different or
19 divergent in terms of how they would access that
20 information, what information ostensibly they
21 would need access to. So for a reporting entity
22 one could argue that they need more access than
23 just a member the general public that is trying
24 to learn more about who they're doing business
25 with. They have a specific obligation under the

1 money laundering legislation in Canada.

2 And then of course there's -- but that is
3 one level, any person.

4 The second level is, you know, unfortunately
5 named a transparency report, but not to be
6 confused with the transparency report that
7 houses the beneficial ownership at the corporate
8 records office of a private company. The
9 transparency report is available to regulators,
10 law enforcement, other government agencies, so
11 they would have much broader access. Much more
12 personal information or personal identifiable
13 information would be available to them as well.
14 That could include their date of birth --
15 include their full date of birth, include their
16 CRA number. So much more private or personal
17 information is available to them.

18 And so right now under the Land Owner
19 Transparency Registry we have two thresholds.
20 So it depends if you -- there could be a case
21 for there to be three thresholds. One for law
22 enforcement, for regulators, for other
23 government departments; another level for
24 financial institutions or other reporting
25 entities that have specific obligations under

1 the money laundering legislation so they can
2 fulfill their obligations; and then a third
3 level for members of the general public or
4 people conducting due diligence or whatever
5 their need for this information is.

6 Now, taking into account what Ms. Johnson
7 just talked about how lawyers require access,
8 well, they're not a reporting entity under the
9 AML legislation. They are covered under their
10 own professional obligations to conduct money
11 laundering due diligence or due diligence with
12 respect to identification of high-risk
13 transactions under money laundering risk. So
14 therefore, you know, you could lump them in
15 under -- with other reporting entities as well.

16 (CT) I'll just add one brief thing, if it's
17 okay. I think there's two aspects. One is what
18 we consider to be -- sometimes it's called
19 legitimate interest, and the question is who has
20 a legitimate interest. And I think that we all
21 have a legitimate interest. You know, we
22 have -- you know, if you are investigating that
23 company; if you are thinking of working for that
24 company; if you are thinking of buying from that
25 company; if that company operates a plant down

1 the street from you; if you're competing with
2 that company. I think all of us have a -- you
3 know, this company was set up to be an
4 artificial legal person to act on behalf of
5 others and I think we all have a legitimate
6 interest in that and that's ultimately why the
7 EU went for public.

8 The other aspect is that when you're talking
9 about external actors and, you know, the -- many
10 of the -- when we're talking about the
11 snow-washing and the money laundering in -- of
12 overseas property or other aspects using casinos
13 and so on, we're talking about offences where
14 the predicate offences were overseas. And if
15 you're in a country where actually it's the
16 heads of the government or the senior ministers
17 and so on or -- that are committing those crimes
18 and you're a civil society actor doing that,
19 then, you know, who is going to be investigating
20 that? And is that really what BC wants, to be
21 an enabler for maybe making it more difficult
22 for Canadian crime but easier for overseas
23 crime, enabling corrupt regimes to exploit and
24 to -- you know, the resources of the country at
25 the expense of the population?

1 So I think that there's some -- really that
2 this has to be public. And then we may come on
3 to this, but there's also the quality --
4 improved quality aspects around public as well,
5 public access.

6 Q We certainly will get to that. And I wonder if
7 I could -- go ahead, Mr. Cohen. Yes.

8 A (JC) I know you want to move through everything.

9 Q No, no, no, I -- well, look, these aren't -- to
10 the extent that I'm trying to put them into two
11 minute blocks and it doesn't admit of that, I
12 think we need to cover the points. You go
13 ahead.

14 A (JC) Sure. On access, I agree with a lot of the
15 points made so far. From Transparency
16 International Canada's perspective, our
17 recommendation is a two-tier system that very
18 minimal amount of information would only be
19 accessible to law enforcement and relevant
20 government bodies and everything else is open to
21 all public. And by open -- and I think this
22 is -- this was one of the challenges with AMLD5
23 in Europe where they didn't define "public" very
24 well -- is that no paywall. It should be free
25 to access. And no -- of the steps that

1 Mr. Taggart had to go through with the
2 BC corporation of registering one way as a
3 Canadian citizen, registering another way as a
4 foreigner, just open to the world.

5 And a few points I'd like to make on this,
6 very much to Mr. Taggart's point. If Canada is
7 open to public money or money from the world
8 coming into Canada, we should also be open to
9 global scrutiny as well for the very reasons
10 Mr. Taggart pointed out. There are people
11 within the countries where the predicate offence
12 occurs that can better identify the information
13 within our registry than our own law enforcement
14 or our own civil society could identify. And if
15 there's a whistleblower mechanism within the
16 registry, which I highly recommend there to be
17 one, there's the ability to tip off our law
18 enforcement to what they see as maybe the
19 commissioner of police, who only makes a
20 thousand dollars a year, owning a mansion in
21 Vancouver.

22 And if we look at, say, the -- when the
23 Panama Papers came out and the International
24 Consortium of Journalists, a lot of the
25 information initially went to large, high

1 profile newspapers around the world with excess
2 amounts of resources -- maybe not in today's
3 newspapers, but still it was on the ground
4 actors from where that predicate offence
5 occurred who were better able to make the
6 identification.

7 So there's that sense. If somebody's money
8 is going to leave their country and was stolen,
9 they have the right to follow that money. And
10 if we're being open to international funds, we
11 have an obligation to be open to international
12 eyes. And to that extent Canada needs to see --
13 and exactly as Mr. Taggart said, does BC want to
14 be known as a place that just allows itself for
15 the money to be dumped? And I'd put to more
16 broadly to Canada where we have to look at
17 ourselves in a global systems perspective on
18 this. We can't be fighting anti-corruption or
19 some of our worst issues globally of endemic
20 inequality or environmental degradation or
21 conflict if we don't see ourselves in this
22 global systems perspective of illicit financial
23 flows.

24 And if we have some of these targets in our
25 foreign policy of wanting to bring greater

1 stability to the world or wanting to bring
2 greater equality to the world or wanting to end
3 environmental degradation, it's not just a
4 matter of giving foreign aid money. We have to
5 see ourselves within this international network
6 and therefore we have to be open to this global
7 scrutiny that occurs as well. And that's why
8 all actors need to be available. And it would
9 be great to think that law enforcement on their
10 own can look at this information and get the job
11 done, but I believe there was a headline last
12 week that said that -- revealed that the
13 promised funds for upgraded anti-money
14 laundering enforcement in Canada, or at least in
15 BC, hasn't even been delivered yet since last
16 year.

17 So there's the idea that we're going to have
18 enough law enforcement to address all money
19 laundering. We need more eyes to, A, as
20 Mr. Taggart pointed out, give scrutiny to a
21 registry just as was done with the persons of
22 significant control registry, and also to help
23 follow the money.

24 Q Some of this is the concept of the public -- and
25 including journalists and in particular

1 investigators, but the public serving as
2 verifiers of information and is the best place
3 to actually ferret out revealing information of
4 criminal activity.

5 A (JC) Agreed.

6 Q On the question of the cost for this sort of a
7 database, there seems to be certainly a number
8 of comments in support of there being free,
9 unhindered access without needing a hundred
10 dollar deposit onto a credit card and waiting a
11 few days to create an account. Most people's
12 online behaviour, I think, is such that that
13 small amount of friction of making an initial
14 outlay of cash and creating an account and
15 waiting a few days may simply leave them
16 forgetting to go back to the website or not
17 pursuing the inquiry.

18 But are there other views on this question?
19 Because at one level that might seem like the
20 sort of undertaking to create this sort of a
21 registry and then make it available to the world
22 that may entail some cost. Should there be a
23 cost imposed, and if so, on who? Should it be
24 people visiting the site in order to search for
25 that information as opposed to, let's say,

1 through the cost of incorporation for companies
2 or other mechanisms?

3 A (CT) I'll start if it's okay. Go ahead, Peter.

4 (PD) Sorry, Chris. But just as an initial
5 comment would be there are beneficiaries to
6 having an open, accessible, verifiable registry
7 of beneficial ownership, and large institutions
8 such as financial institutions would or could
9 have a significant interest and benefit from
10 having access. And that access -- in terms of
11 the cost of setting up a registry, that access
12 could be offset and it would be offsetting their
13 already -- you know, their already costs
14 associated with compliance right now. So you
15 could impose -- and it has been discussed
16 globally as well, but you could impose costs to
17 large institutional clients of registries like
18 this that are given broader access. You know,
19 basically an API downloadable access to the
20 information where they're not just making
21 individual queries but they're making large
22 data-gathering query exercises in order to match
23 that data against their own institutional data
24 to look for issues around compliance and -- with
25 money laundering legislation, but they're

1 conducting their own due diligence with respect
2 to their customers.

3 So there is an opportunity to offset these
4 costs or these development costs with
5 recognizing and understanding that there are
6 beneficiaries to having this information
7 available. And the larger the organization, the
8 more benefits that they're gathering from that,
9 you could have a sliding scale of costs
10 associated with that.

11 (CT) So just to your question, I guess the
12 question is who benefits from a company
13 existing. I mean, a company just doesn't exist,
14 you know, and we all have to pay for it. It's
15 not like a street lamp or something where nobody
16 really gets -- you know, no individual entity
17 gets a benefit. This is something that somebody
18 gets a benefit from the creation of a company.
19 And there are externalities to do with this, as
20 we've seen. You know, companies can be used
21 for -- be used for all sorts of problematic
22 purposes. And so it's right that those
23 externalities, those costs of, you know,
24 creating that company are borne by the people
25 who benefit, the people who create the company.

1 If you are then -- once you then go down that
2 route of charging for access to information
3 about it, the question is why do you have a
4 register in the first place? I mean, why does
5 the BC register exist?

6 So I go back to the point about -- the quote
7 from Robert Lowe in terms of it exists so that
8 the -- we can -- so that people can have access
9 and see who they're doing business with. And
10 when you start to -- you know, if you -- it just
11 doesn't make any sort of sense to charge for
12 that the information because what we're going to
13 -- what you're saying is is that we will make it
14 more difficult for people to access that
15 information. We want to collect it, but we
16 actually don't want people to use it, so it's
17 nonsensical in terms of charging for that. And
18 whether you charge \$5 or \$50 or even a dollar,
19 each bit of that is adds friction. It adds
20 friction for the people using it, it means that
21 there needs to be a charging regime around that
22 and it adds all sorts of difficulties around it.
23 It means that can people -- are you saying that
24 actually some big companies will have access to
25 the underlying data and they can do all sorts of

1 things but actually, you know, more innovative
2 companies can't so, you're essentially making a
3 cost of -- you know, a capital cost essentially
4 for doing this.

5 If you genuinely think that when -- by
6 creating -- by having this power to create -- or
7 talks about creates legal personalities, create
8 legal entities and that there needs to be a
9 record of this. Then, I mean, one of the things
10 that Tim Moss, who is the head of the company
11 registrar -- the Registrar General of the UK, he
12 said basically our job is to run a register, and
13 our core metric should be the number of people
14 that use that register. And since they've moved
15 towards open data and making all of this
16 available for free and actually has underlying
17 data, the increase of the use of that register
18 has increased well over 100 times.

19 Now, people don't search company registers
20 for fun, generally. They search it because
21 they're in business; they need to know about it;
22 they search it because they're trying to work
23 out whether they want to work for this company;
24 they search it for doing law enforcement. If
25 you're just -- one is that increase in use is a

1 powerful driver to better business and for
2 innovation and for trust. And if you reduce
3 that, yes, you might be able to charge a few
4 million dollars out of it, maybe that, but at
5 the expense of what? You know, you could maybe
6 charge it so that every time you walked under a
7 street light you had to pay \$1 otherwise the
8 light went dark on you. I mean, we can do these
9 things, but fundamentally let's look at the
10 wider, bigger picture.

11 And only other thing I would say about both
12 access -- public access, about costs, about
13 making it available as open data, we already
14 have an example of what happens when you do this
15 in the UK, and do you know what? People didn't
16 stop registering. People didn't stop declaring
17 their information. People didn't stop doing
18 business in the UK. In fact quite the opposite.
19 And the sky didn't fall down and actually we
20 have more understanding, we have better
21 visibility and we have more trust now.

22 Q Well, that's an important point because one of
23 the arguments that is sometimes put forward
24 against this sort of an initiative is that it
25 might deter people from incorporating in that

1 jurisdiction, that they'll simply venue shop
2 elsewhere. You simply say --

3 A (CT) Obviously some of the bad guys will do
4 that; right? And that's a good thing. That's
5 not -- that's a feature, not a bug, as we say in
6 the tech world, you know. It's -- we want the
7 bad guys to go elsewhere. Not that they won't
8 exist. Criminals will always exist and the
9 incentives are such that people will use this.
10 But we should be making life difficult for
11 criminal activity, as I think you've heard from
12 other witnesses. It's a sort of a business in a
13 way. They consider themselves a business. They
14 don't think -- you know, they -- you know, it's
15 a cost-benefit thing, you know. And it's, what
16 are the benefits I can get from this criminal
17 enterprise and what are the costs? How likely
18 am I to be caught? If I get caught, what will
19 be the downsides?

20 And what you're doing is you're changing the
21 cost-benefit balance here. And it should be,
22 you know, it should be more likely -- you know,
23 criminals should be driven from BC and go and --
24 you know, and go and incorporate in Panama or in
25 some other jurisdiction. That's a good thing.

1 Q Let me ask you -- go ahead, Mr. Cohen. Yeah.

2 A (JC) I just wanted to chime in with a couple of
3 points to the cost. One -- first, I absolutely
4 agree about Mr. Taggart on we don't want storage
5 of illicit finances to be a function of our
6 economy. We don't want empty condos blocking
7 out new homeowners and just being the safety
8 deposit box of criminals in the sky to be part
9 of what we do. So I would definitely agree with
10 him on that that if it dissuades certain people
11 from incorporating, that's great.

12 And on the basis of a deterrent, a fully
13 publicly accessible registry will wind up
14 helping that -- will wind up helping part of
15 that function of a registry as a deterrent. So
16 as, an example, Scottish limited's partnerships
17 were not initially part of the UK registry and
18 were being observed and commented on as major
19 vehicles for criminal activity. And when they
20 were finally brought into the UK registry, there
21 was a drop of roughly 80 percent incorporation
22 of those. So obviously there was -- they were
23 being overused but by the wrong actors.

24 So if criminals know that there is a
25 deterrent, if they don't see those same metrics

1 that Mr. Taggart was talking about about usage,
2 they'll still see Canada and BC as a potential
3 safe zone if people aren't using it.

4 Two, when we look at costs, let's also think
5 about costs recovered on the other side of this
6 and the money that we can recoup from tax
7 evasion that has been used by shell companies as
8 well. So it's not just a matter of how much is
9 the public spending on this and not getting back
10 in costs incurred so much as what are we getting
11 back in tax revenue received; what are we
12 getting back in cutting down in CRA, in police,
13 in FINTRAC investigation times for them to be
14 able to do their business; what are we getting
15 back in terms of businesses cutting down on the
16 due diligence work that they have to do and
17 businesses being able to conduct their business
18 better?

19 Which ultimately, you know, the industry
20 ministries across Canada that look at a registry
21 like this purely from the perspective of how
22 easy is it for a company to incorporate, should
23 also be looking at it how much does our registry
24 cut down the burden of needed due diligence
25 requirements. So I think a lot of the

1 ministries in Canada need to turn that
2 perspective around.

3 And then finally we also already have
4 precedents in Canada for a completely free
5 registry to access, which is the Extractive
6 Sector Transparency Measures Act, which requires
7 extractive companies to report on payments made
8 to governments and is an initiative that Canada
9 has exported as an idea around the world. That
10 does not -- that does not cost to access. It is
11 viewed as a public utility to access information
12 for citizens to know more about the business
13 that's being done especially with governments,
14 which is incredibly important. So I think we
15 need to see it that way from the public utility
16 perspective.

17 Q Let me move into asking about -- we've touched
18 on this, but I think it might be helpful to put
19 a bit finer point on it. What particular data
20 or information are we talking about, again in
21 normative terms, should we have included in a
22 BOT public register? To ask that question I'm
23 going contrast two documents.

24 MR. MARTLAND: Madam Registrar, if we could look,
25 please, at tab 6, which is exhibit 284 now. And

1 page -- numbered page 13, which might be about
2 15 or 16, if you will, of the -- there's a
3 table 1. Okay. There we go. It's at the top
4 of that page. Thank you.

5 So have a look, please, at the table 1 here.
6 And you'll see this is, Mr. Cohen, from the End
7 Snow-Washing Coalition, one of the reports that
8 we referred to earlier. Do you recognize that?

9 A (JC) I do.

10 Q Good. And so we see first:

11 "A unique identifier number that shows
12 ties to other business entities over which
13 the individual has significant control
14 (generated by the database itself)."

15 What's suggested there is that that should be
16 public. The full legal name, public. All other
17 names the person is commonly known by, public.
18 Date of birth, partial, meaning that the public
19 portion would be month and year; the particular
20 day of the month would be under the private side
21 of the ledger. Under the "public" heading,
22 usual residential address and service address.
23 Of course they may not be the same. Under the
24 "private" side, next we see the country of
25 principal tax residency. Next, public, country

1 of usual residence, private citizenship. But
2 the remaining items there are public: the
3 nature and extent of beneficial interest held,
4 the day on which the individual became or ceased
5 to become or be a beneficial owner. And also
6 public whether someone is a PEP, politically
7 exposed person status and/or the head of an
8 international organization standard.

9 Are there views from the panel -- this is
10 one view of the world that would put certain
11 items on one side or the other of the public
12 versus private. Do panel members have comments
13 on their agreement or disagreement with that
14 approach?

15 A (CT) I would broadly agree with it. I -- from a
16 practical point of view and from again looking
17 at the UK example, the citizenship, the
18 nationality, not necessarily the same thing, but
19 the citizenship and nationality in the UK is
20 public and we've not seen any significant
21 problems as a result of that. So -- or any
22 problems I'm aware of in fact as a result of
23 that. So -- and as a matter of fact
24 directors -- company directors, their
25 nationality is also public in the UK.

1 So I'm not -- you know, I'm not convinced
2 that there's a problem in making that public.
3 And I can see many, many uses, particularly when
4 you have common names and so on and -- for
5 disambiguating this -- through this sort of
6 stuff. And for investigations by law
7 enforcement, by civil society, by journalists
8 and so on overseas. So I can see significant
9 benefits for that.

10 And I think there's -- it's always a
11 challenge when you've got a politically exposed
12 person as part of a beneficial ownership field
13 in term of whether they are or not is something
14 that changes independently of company -- of
15 their ownership of the company. And so it's one
16 that is just a little bit tricky to -- you know,
17 there's some tricky aspects of that, but I
18 broadly agree with this.

19 Q Ms. Johnson?

20 A (MJ) Sorry, did you --

21 Q I just wanted to see if anyone had any other
22 comments, Ms. Johnson or Mr. Cohen.

23 A (MJ) yeah.

24 Q And it's fine if you don't. It's not --

25 A (MJ) Yeah. So just generally, obviously if the

1 legislature passes legislation to create a
2 public beneficial ownership registry with its
3 own privacy law analysis as to what kind of
4 information is -- it feels comfortable making
5 publicly available, so I think -- I mean, in
6 Canadian jurisprudence, section 7, section 8
7 does protect privacy rights of Canadians. And
8 essentially there would probably be -- any
9 disclosure -- public disclosure would have to
10 meet section 8 and section 7 and be justifiable
11 under section 1, which is the limitations
12 clause.

13 So it really -- I would just sort of suggest
14 -- and in Canada there is some history around
15 citizenship and preventing discrimination on the
16 basis of national origin. So there might be
17 areas where the legislature decides that in
18 accordance with Canadian law some personal
19 information might not be justifiable under
20 section 1 to be disclosed, possibly a
21 residential address but possibly not. But one
22 thing I would say is I think from my perspective
23 it would be really important to not throw the
24 baby out with the bath water and use this as a
25 reason to not have a beneficial -- a public

1 beneficial ownership registry.

2 Obviously when you put up a list like this,
3 it's clear that legislatures can make choices
4 about what information becomes publicly
5 disclosable. And that's still -- you know, that
6 would still -- nonetheless there would still be
7 huge benefits to making the remaining
8 information publicly available for all the
9 reasons that Peter and James and Chris have
10 enumerated already.

11 Q Ms. Johnson, this discussion may move us into a
12 consideration of this topic of privacy. Your
13 submission to the Cullen Commission, which is
14 now exhibit 283, addresses that. Equally
15 there's a document -- Madam Registrar, I'm now
16 out of sequence -- but number 9 -- tab 9 on the
17 list is a report that you authored in, I think
18 October 2019 from the End Snow-Washing
19 Coalition. But your document -- or you're the
20 primary author, "A Public Beneficial Ownership
21 Registry and the Canadian Privacy Regime: A
22 Legal Analysis."

23 A (MJ) Yes.

24 MR. MARTLAND: Could I ask, please, Mr. Commissioner,
25 that this document become the next exhibit.

1 THE COMMISSIONER: Very well.

2 THE REGISTRAR: The next one is 290,

3 Mr. Commissioner.

4 **EXHIBIT 290: Mora Johnson, A Public Beneficial**
5 **Ownership Registry and the Canadian Privacy**
6 **Regime: A Legal Analysis, October 2019**

7 MR. MARTLAND: Thank you.

8 Q And I won't have time enough to work our way
9 through, but this is -- you gave us a very
10 compressed synopsis of the Charter guarantees
11 that are at issue and the need for there to be
12 an appropriate balancing that anticipates
13 concerns under the Canadian constitutional
14 framework about particular types of information
15 that might be problematic if simply published
16 for the world to see.

17 A (MJ) If I could add one other point, which is I
18 think that in the UK, for example, there's a
19 public publishing exemption by application.
20 This is another sort of policy consideration
21 that the legislature could look at. There might
22 be persons who have legitimate reasons to not
23 want their information published and
24 BC officials could determine the parameters for
25 applying such an exemption as well and that

1 would certainly go some way to adjusting any
2 individual privacy issues that might arise.

3 Q This won't do it justice, but one part of the
4 analysis in the paper that's displaying on the
5 screen that you wrote engages in a
6 consideration, as happens so often in
7 constitutional analysis, what are the objectives
8 of this law as opposed to what are the potential
9 charter infringements and can they be minimized
10 to the extent that there are negative
11 implications for people's constitutional rights.
12 And you identify a number of objectives that
13 would seem to be very much serving the public
14 interest, collective interest, in dealing with
15 these things.

16 I should also add this. You come down at
17 the end of day in favour of there being
18 legislation so that it's very clearly spelled
19 out -- if there is to be information gathered,
20 processed, made available to the public, that
21 that's done quite directly through legislation
22 so that it's spelled out in plain terms with the
23 authority of legislation. Is that fair to say?

24 A (MJ) Yes. I mean, the Privacy Act makes it
25 pretty clear -- makes it difficult for the

1 government to just willy-nilly publish the
2 information that it gathers. So clear
3 legislation setting out a public registry would
4 be desirable.

5 MR. MARTLAND: Madam Registrar, we can take that
6 document down now. Thank you.

7 Q Since we've moved into the area of privacy I
8 wonder if I might turn to the sorts of
9 protections or measures that might be used to
10 anticipate circumstances where there might be a
11 good reason to depart from simply publishing the
12 information on a public database, for example,
13 minors or in circumstances where a person has a
14 well-founded basis to fear for their own
15 personal safety or to fear that there could be
16 some harm arising.

17 Are there particular mechanisms or
18 approaches that any of the panel members would
19 care to comment on for addressing those sorts of
20 issues that could arise if there were a database
21 that simply took the names and the identifying
22 information along the lines we just referred to
23 and displayed it for the world on the internet?

24 A (MJ) May I just really briefly -- I think just
25 to be clear that the government would still

1 collect this information from all beneficial
2 owners of all corporations, as we've just been
3 discussing here today. But the issue would
4 really be an application made by particular
5 beneficial owners to avoid the public
6 publication of their personal information. And
7 just as a couple of, you know, thoughts about
8 it -- I think Chris Taggart probably has some
9 good experience with the UK example he might
10 want to illuminate -- but there might be
11 business reasons as well that could be
12 considered.

13 There might be personal reasons. For
14 example, the beneficial owners would -- the
15 nature of the business that they're in, for
16 example, concerns about harassment. And that
17 they could apply, provide evidence of why they
18 should be exempted and that this could be done
19 on a case-by-case basis. The decision could be
20 made on a case-by-case basis.

21 Q Mr. Taggart?

22 A (CT) I would start again from the UK case. And
23 it may be, as Mora says, you know, that --
24 because of the Canadian constitution, something
25 like citizenship or nationality might be taken

1 from a different -- you know, you might take a
2 different perspective, and that's absolutely
3 right that you should be able to do that.

4 But I would start from the UK case, let's
5 use the UK example, and what that basically says
6 is that this is -- you know, that takes the view
7 that being a beneficial owner, being --
8 benefitting and running and controlling a
9 company is a public act and that there's a
10 public record of it. And that's the -- you
11 know, there's a decision to do that, that you
12 have made that decision, you know, essentially
13 with your eyes open to do that. And that if you
14 don't wish to do that and, you know, people had
15 enough warning -- you know, had plenty of
16 warning in the UK and they could have closed
17 their UK companies or, you know -- and, for
18 example, traded as sole traders, you know, and
19 been personally liable.

20 But you get those -- that is the trade-off
21 that you make as a director or founder or the
22 shareholder of a company is that you say okay,
23 well, I get benefits, I get protection under
24 law, I get this proxy to act on my behalf and I
25 get all these benefits from it, and that's the

1 trade-off you make.

2 The requirements were very, very limited and
3 very specific, and it's more or less along the
4 lines that there's something to do with the
5 nature of that company that would cause it be --
6 cause you to be on the risk. And, let's say,
7 animal testing. Now, whatever your views about
8 animal testing, nevertheless animal testing is a
9 legitimate activity and that if you are a
10 director of an animal testing company, then you
11 may be at risk as -- because of the nature of
12 that company.

13 Now, if you happen to be, you know, an
14 oligarch and you're a beneficial owner, then of
15 course, you know, what is part of the nature of
16 being an oligarch, part of the nature that
17 people in such regimes are -- want to launder
18 their money and want to buy property in
19 Vancouver or London or somewhere like this is
20 because of the rule of law because of the safety
21 of that, of having those assets in those sorts
22 of places. But simply being an oligarch itself,
23 you know, you've chosen to be an oligarch; it's
24 a risky business being an oligarch; that doesn't
25 give you the right to not be on the register.

1 And so I think I would start from that
2 starting point from the UK and say what is it
3 that we think is specific about our case or we
4 think that the UK has got wrong that we would
5 like to change.

6 And just on the issue of minors or people
7 without the capacity to make a decision, I
8 struggle with how they can be, you know,
9 beneficial -- they can control a company if they
10 don't have the capacity to make a decision. You
11 know, and if you're saying -- as we've seen, you
12 know, in the UK there was some ones where babies
13 of less than a year old were being put down as
14 beneficial owners, and I'm really wondering
15 who's controlling that company if you've got,
16 you know, a toddler doing it.

17 So I think we have to look at specific
18 examples. The limitations should be really
19 quite narrow. And in the UK, again, we've not
20 seen any issues -- we've not seen any issues as
21 a result of this. And I think, you know, under
22 50 people have been given those exemptions and
23 that's in -- on a database of about 4 million or
24 so, so we're really talking about very limited
25 cases. They do exist, absolutely, but they're

1 very limited, and I would say start from that
2 position of the UK, deviate where you think it's
3 required because there's some particular aspects
4 of Canadian law or situation or where you think
5 they've got it wrong.

6 Q I'm going to move to one item I almost neglected
7 to do. But, Mr. Cohen, I'll ask our registrar
8 to please display tab 7 and then following that
9 tab 8. And this is just to cover off because
10 these are documents I don't propose to review at
11 length but I would like to just confirm what
12 they are.

13 These are two different technical briefing
14 reports prepared by the End Snow-Washing
15 Coalition. Do you recognize that, tab 7,
16 dealing with the information fields on
17 beneficial ownership registries in international
18 jurisdictions?

19 A (CT) I do.

20 MR. MARTLAND: I'll ask please, Mr. Commissioner, this
21 become the next exhibit.

22 THE COMMISSIONER: 291.

23 THE REGISTRAR: 291.

24 **EXHIBIT 291: Transparency International Canada,**
25 **Technical Briefing Note - Comparison of**

1 **Information Fields Amongst Beneficial Registries**
2 **in International Jurisdictions (2020)**

3 MR. MARTLAND: Thank you. Next tab 8.

4 Q Likewise, Mr. Cohen, a technical briefing paper
5 dealing with the necessary components and
6 considerations for a publicly accessible,
7 Pan-Canadian company registry?

8 A (JC) Yeah, I recognize that.

9 MR. MARTLAND: I'll ask that be exhibit 292, please,
10 Mr. Commissioner.

11 THE COMMISSIONER: Thank you.

12 THE REGISTRAR: Exhibit 292.

13 **EXHIBIT 292: Transparency International Canada,**
14 **Technical Briefing Note - Necessary Components**
15 **and Considerations for a Publicly Accessible,**
16 **Pan-Canadian Company Registry of Beneficial**
17 **Owners (2020)**

18 MR. MARTLAND:

19 Q Let me turn to data quality and the distinct
20 concepts of validation as opposed to
21 verification of the information that is provided
22 and then made use of through a BOT register.

23 Mr. Taggart maybe first you can help us
24 understand what I understand to be a distinction
25 between validation and verification, and then

1 offer your views on what the gold standard would
2 be for both validation and verification of data?

3 A (CT) Absolutely.

4 MR. MARTLAND: Before you do I'll just say, Madam
5 Registrar, we can have that document taken down.
6 Thank you.

7 THE WITNESS: (CT) So when we're talking about
8 whether the data is correct, right, you know,
9 whether it is right, whether it is truthful and
10 so on, this is a hard problem to do. This is
11 almost a philosophical problem, you know, akin
12 to I've only ever seen white swans; does that
13 mean that a black swan doesn't exist or not?
14 You know, these are difficult things to do. And
15 essentially you will never get to perfect, but
16 you can get to good.

17 Firstly, you know, there's -- we should just
18 separate out those issues. There are three
19 issues really. One is authentication or
20 authorization. So who's making this claim, and
21 are they authorized to do so? And actually in
22 BC this OrgBook which I mentioned earlier has
23 got some really interesting work around the
24 technology -- the blockchain technologies which
25 are going to allow this and allow digital

1 identities. We're already using -- all of us
2 are using digital identities, if we have a
3 Google account, often using our phones and
4 backups and so on as authentication devices.

5 We are using these sorts of things, and I
6 think this is where in five years' time company
7 registers will be increasingly using this to
8 identify to make sure that John Smith here is
9 that John Smith there is the -- you know, for
10 two reasons. One is to say the two John Smiths
11 are the same. We'll be using digital identities
12 around that. But we'll also be making it much
13 more difficult for people to impersonate
14 directors and say, I'm a director and I'm -- and
15 you should change the registered address or
16 something like that.

17 So one is there's some issues -- additional
18 issues around authentication and authorization.
19 But there are two things you pointed out. One
20 is validation and the other is verification.
21 Validation mean is it a valid -- does it have a
22 valid value. So, for example, a beneficial
23 owner with a date of birth in the future isn't a
24 beneficial owner. That's not valid.

25 And many examples of that. If you are --

1 you know, there are also ones where it's a
2 little bit hard to tell. That person who's over
3 a hundred, are they really over a hundred? Is
4 that a mistake, or are they -- is there
5 something -- you know, it's possible. Over 200,
6 I don't think there's anyone in the world that
7 is over 200 today. So there are ones where
8 there's validation.

9 There's ones where it's not just a binary
10 thing; it's one where you, you know, allow
11 certain values through and others you have to
12 have some sort of proof and so on around them.
13 So validation is just are there values, and
14 those can be even extended to is this a valid
15 Canadian address, for example, or is this
16 something that's been made up. There are things
17 you that you can do. And these days Companies
18 House in the UK, they did none before. These
19 days they're doing a lot in terms of -- it also
20 stops people saying, what's your nationality?
21 Oh, I'm British; I'm English; I'm Cornish; I'm,
22 you know, Yorkshire. You know, all these sorts
23 of things. It means that well, I'm Englishman;
24 you know, I'm an English woman. You know, it
25 gives you higher quality around this.

1 Verification is much more difficult,
2 particularly verification of beneficial
3 ownership because what we mean is is the fact
4 that's been stated true. And I would urge
5 you -- I think maybe you have some of this
6 already in some of the snow-washing stuff, but
7 it's worth looking at the underlying concepts
8 used in the beneficial ownership data standard
9 by open ownership that really talk about what do
10 we mean by beneficial ownership. And
11 effectively we're saying what happens when you
12 collect beneficial ownership, when you record
13 beneficial ownership, is a statement is being
14 made by the company or the beneficial owner
15 themselves. They're saying, this person is the
16 beneficial owner, or I am the beneficial owner
17 of this company. Or occasionally you're having,
18 you know, a assertion made by -- a hypothesis
19 made by someone external a bank saying, I'm not
20 sure that this person is the beneficial owner,
21 or I've got some other information here.

22 But you've got those two things. And the
23 first of those is a really hard thing to do
24 because -- and this is another reasons why it's
25 so important the data is public -- criminals

1 prove, you know, like, the black swan problem,
2 which is it's difficult to prove that this
3 person isn't acting on behalf of somebody else.
4 You just don't know and don't access -- don't
5 have access to the facts that there's some side
6 agreement with somebody else. You know, let's
7 say they're a lawyer, for example, or that
8 there's some side agreement with somebody else
9 to act on their behalf. Those sorts of things
10 are -- you know, are difficult to find, but
11 there are a couple of ways that we can do this.

12 Firstly, we can realize that it's a problem.
13 And actually the UK is doing -- again, is doing
14 some quite interesting stuff around that, and
15 particularly starting to use -- digital
16 identities is a route they'll be going down, I
17 think. Secondly, we can -- as Peter pointed
18 out, I think, you know, in terms of getting
19 professionals in the country as well that can be
20 prosecuted, that can be put in prison if they're
21 acting on behalf of -- fraudulently acting on
22 behalf of people they haven't done a check and
23 they haven't been able to attest that this
24 person really is the owner to their
25 satisfaction, then that can strengthen it as

1 well.

2 But also, finally, is -- particularly if --
3 you know, it's difficult to lie consistently.
4 When you -- you know, and this is something that
5 law enforcement have known lots of times.
6 They'll tell a story here and they'll tell a
7 story here and those things contradict, and the
8 further you make -- the further you put those
9 two stories away from each other by locking this
10 behind some paywall and locking that behind a
11 paywall, the harder it gets to see those
12 contradictions. If they can say oh, on this
13 register -- on the BC register, hmm, wait a
14 minute; I'm owner of this company and this owner
15 is -- this company is connected with another
16 one, but actually those two things conflict.
17 You know, one is a parent of the other and those
18 sorts of things conflict.

19 There's a thing called Benford's Law which
20 is about analyzing company numbers -- sorry,
21 company -- analyzing company financials to
22 identify which company financials are being made
23 up. It's about the distribution of numbers in
24 -- generally in company financials. Again,
25 we've seen clients of OpenCorporates doing some

1 amazing AI work finding contradictions in
2 networks that just don't make sense and provide
3 this sort of stuff.

4 So the truth is is that the reason why
5 criminals don't want public beneficial ownership
6 registers is it's significantly riskier for all
7 reasons to lie in public than it is to lie
8 privately. That doesn't mean that -- you know,
9 that it's not still possible, but it does mean
10 that their chances of getting caught, the
11 chances of them using, for example, let's say,
12 you know -- so there's a concept called many
13 eyes and it comes from open source software and
14 the idea is that all bugs are shallow, all bugs
15 are easy to find given many eyes. And if you
16 have people looking at the data in lots of
17 different contexts, not just the registrars, not
18 just the law enforcement, but lots of different
19 contexts, you can identify things that you
20 wouldn't know because they are coming from --
21 let's say that they are, you know, Arabic, or
22 that they are coming from, you know, Estonia or
23 wherever, and that they know something about it.
24 They know that this place here, that address
25 that's the beneficial owner of a multi-million

1 dollar company, is actually some sort of tiny
2 shop in a grubby place or something. You can
3 see things like that. You can see that actually
4 this name is -- I don't know -- for example, the
5 transliteration of Donald Duck in Arabic, for
6 example, you know, these sorts of things. It's
7 hard to lie in public, but the first thing is
8 going to be one of making it open. That's why
9 the UK took that approach.

10 The second thing is that we can collect the
11 information accurately and that means keeping it
12 up to date because somebody will lie and say,
13 oh, I'm not the beneficial owner, and then, you
14 know, maybe that's true on that day. Three days
15 later they are, and they're not reporting it,
16 for example. So there's a lot you can do around
17 that.

18 And we've written -- we co-wrote with open
19 ownership a series of blogs about what you can
20 do and how to handle that. And I don't want to
21 go through -- take up the commission's time with
22 this sort of stuff, but there's a lot you can
23 do. And it starts with validation, it starts
24 with making that information open and then
25 starts moving down more -- you know, more

1 interesting, more tricky routes, whether it's
2 professionals attesting to things, whether it's
3 digital identities and so on.

4 Q When we think about compliance and enforcement
5 in terms of where there is inaccurate
6 information given to the registry, it seems
7 there are a number of different kinds of tools
8 that might be looked to to deal with those
9 circumstances. Compliance orders to correct
10 information. Administrative penalties that
11 could be imposed and of course a range of
12 different kinds of approaches or penalties that
13 might be used. The possibility of suspending or
14 even dissolving a company's status.

15 Maybe, Mr. Dent, or any other panelist who'd
16 like to comment on the range of measures there
17 for compliance and enforcement and what should
18 be taken into account in determining the
19 appropriate kind regime.

20 A (PD) Thank you. I mean, the first obligation of
21 the registry or of the regulator should be to
22 look for opportunities to drive compliance. And
23 what are those opportunities to drive
24 compliance? They're not always going to be the
25 most severe sanction. Most -- as we've talked

1 about, the vast majority of filers will be
2 filing -- will not have not have an adverse
3 reaction to filing their beneficial ownership
4 information or the nominal information about
5 their company or their corporate structure. And
6 so there will be the land of many mistakes or
7 inadvertent mistakes or honest errors that can
8 be cleared up through an administrative process.
9 Warning letters or information circulars that
10 are driving them towards, you know, full and
11 complete compliance.

12 Where there's going to be non-compliance and
13 it's purposeful, then there has to be those more
14 draconian measures that are taken in place that
15 will ensure or enforce compliance from those
16 that would seek to obfuscate or hide or be
17 secretive with respect to the information that
18 they're sharing.

19 So it should be a wide range, but the onus
20 should be -- or the first line of defence should
21 be a general compliance framework that obligates
22 people to maintain compliance but also makes it
23 easier for compliance to take place. That could
24 be drop-down boxes where you're unable to
25 complete a form and submit it unless all of that

1 information is completed and it's completed
2 accurately and therefore you're driving towards
3 compliance; you're not driving towards
4 sanctions, and that should be the first line of
5 defence.

6 Q Ms. Johnson, Mr. Cohen, Mr. Taggart, any further
7 comment on that? I appreciate we could spend
8 another hour on that topic alone, but any high
9 points to take us to now?

10 A (JC) I would say that one on the -- or on
11 validation of information, digital IDs, is
12 definitely a road to explore. I'm not an expert
13 on digital IDs, so I'm not going to get too deep
14 into it other than to agree with Mr. Taggart on
15 there's a lot of innovations I've heard about on
16 this path that will hopefully make this system
17 more reliable.

18 If we also look at the need for unique
19 identifier numbers on the registry, that's
20 another system that's going to let us know, you
21 know, does John Smith -- it's one John Smith who
22 owns 12 companies in Vancouver or 12 John Smiths
23 who own 12 companies in Vancouver. So that's
24 why unique identifiers are also a critically
25 important part of the registry.

1 In terms of penalties, I think one guiding
2 principle is that it can't be -- a penalty can't
3 be seen as the cost of doing business. We're
4 already talking about the importance of money
5 laundering is moving vast amounts of money for
6 criminal enterprise. And if the penalty on,
7 say, seizing a \$5 million home in Richmond is
8 \$150,000, that's, you know, not that much. So
9 we need to look at proportionate administrative
10 penalties and even prison time where necessary.

11 And on top of that we have to look at not
12 just the person who committed the predicate
13 crime, but the intermediaries who helped
14 facilitate that -- or who helped facilitate the
15 money laundering. So there was the amendment to
16 the Criminal Code that put in the term of
17 recklessness in allowing money laundering if it
18 was known to be done. And I've definitely heard
19 commentary from enough counsel within Canada
20 that it's still vague. And so something more
21 concrete on there is whenever there is an
22 attestation document by an enabler that they are
23 signing off that somebody is the true beneficial
24 owner, that there is a legal penalty on -- this
25 would go into the recklessness, but a very

1 severe penalty on any -- whether it be the
2 so-called beneficial owner or the intermediary
3 who signed off on that. It creates a new
4 penalty that all of a sudden you can conduct
5 plea bargains with to find out who the true
6 beneficial ownership is, if it is a criminal, or
7 will be a deterrent for the intermediaries,
8 whether lawyers or accountants or anybody else
9 who would try and verify the information of a
10 criminal. If they see that it's a red flag,
11 they won't be tempted to game the system.

12 Q I'm very mindful that I don't want to tread on
13 my colleagues' toes with respect to their times,
14 but maybe I can do this as a wrap-up. Are
15 there -- we've jumped around through many topics
16 through this discussion thus far. There will be
17 more to come. But are there any sort of key
18 items that anyone feels haven't been touched on
19 that you'd like to make sure we do cover before
20 I turn over to my colleagues?

21 A (JC) I'd like to bring up one thing about -- you
22 know, we've been emphasizing a lot about a
23 Pan-Canadian registry and I kind of want to
24 touch on that. It's in our report on how to
25 implement a Pan-Canadian registry and the fact

1 that we -- it won't be as good to have every
2 jurisdiction -- the federal government, the
3 provinces and the territories all have their own
4 separate registries that don't communicate to
5 each other.

6 One, some jurisdictions don't have the
7 resources to conduct the enforcement that we're
8 talking about or they even need support to bring
9 up their registries to a certain standard. So
10 this is why we need one unified Pan-Canadian
11 registry, and there are definitely
12 jurisdictional issues that run into this. So we
13 can look at it in terms of -- and these are
14 options as opposed to one specific plan. Do all
15 registries feed into one registry held by the
16 federal government that the information is then
17 collected and so they're all cooperating
18 together, or does a federal registry kind of
19 vacuum that information from all the other
20 registries and hold it? I think that is a very
21 important -- and that they all have -- as
22 Mr. Dent pointed out, there is the same
23 standards for data collected and the same
24 verification standards for data collected across
25 all registries. That is hugely important in a

1 country like ours.

2 And then there's the idea of does this
3 registry even have to be associated with the
4 corporate registries? Because we're still
5 talking in terms of, you know, say, the federal
6 corporate registry and is this -- would all this
7 beneficial ownership data would be a hindrance
8 on compliance or Canada's place in ease of doing
9 business. I personally feel that the arguments
10 laid out today actually show that it reduces red
11 tape and makes business easier. But if there's
12 still consideration that the corporate registry
13 is not the best place to do this, then could it
14 be considered that a beneficial ownership
15 registry be an entirely separate registry under
16 the ministries of finance? Because it's the
17 ministries of finance, particularly the federal
18 ministry of finance, that has obligations to the
19 Financial Action Task Force on money laundering.

20 So if there is a point of -- or if there's
21 different points of views at the federal level
22 within industry Canada and finance Canada on the
23 nature of a registry, it should be considered.
24 And I'm not saying it's the best -- there's
25 definitely considerations to think through

1 jurisdictionally but to fulfill our obligations
2 with the Financial Action Task Force and the
3 benchmarks that are continuing to go forward on
4 beneficial ownership transparency around the
5 world, is it just best to separate it out?

6 (CT) I would just like to make one point.
7 Maybe -- I don't want to talk too much about the
8 nature of whether it should be -- things should
9 be Pan-Canadian or whatever because I don't feel
10 that I know enough about some of the specific
11 issues. We know about the snow-washing
12 investigation. Our data's been used in
13 investigations into organized crime in Quebec,
14 for example. So I know little bit about the
15 Canadian situation.

16 But fundamentally what we're talking about
17 here when we're talking about anything of any
18 size is not BC money laundering; we're talking
19 about global money laundering. This is not a
20 BC problem. BC might be a conduit, a vector for
21 this. The rule of law. The fact that actually,
22 you know, you get a fair trial in BC. The fact
23 that maybe prosecutions can be drawn out and
24 appealed and so on. Maybe that it's --
25 Canadians are a pretty nice bunch of people, you

1 know, and also that Vancouver and BC property is
2 seen as desirable, seen as safe, it's a nice
3 place to live. There's lots of reasons why
4 BC might be used. But it's a conduit and it's a
5 global problem.

6 And we've seen, you know, in terms of the --
7 many of the stories about the -- about money
8 coming from China, money come from the east,
9 money coming from Eastern Europe as well and
10 that this is a global problem. These networks
11 are global; they are not BC. And anything that
12 has any British Columbian beneficial ownership
13 solution or even company register solution, for
14 that matter, that treats it as a silo, that
15 treats it as a local problem, will fail.

16 And you need to be able to connect this data
17 up to the data in the UK and be able to walk up
18 the path and see oh, this says that this company
19 is the -- this is owned by -- this person is
20 controlled by this person in the UK via this UK
21 company. You know, if you can -- if you can't
22 see that, then your -- the networks which
23 actually exist and the mechanisms by which money
24 is transferred, by which legal ownership is
25 transferred, won't be solved. And if it

1 doesn't -- you know, if the question is how do
2 we ensure that BC is known for its integrity and
3 stops these problems happening, stops property
4 being inflated, stops money being laundered in
5 BC, and it doesn't -- you know, and it doesn't
6 consider the fact that most of the biggest
7 criminals and the money launderers will be
8 outside of BC, possibly outside -- probably
9 outside of Canada to a degree as well and that
10 the access to solve this are going to be -- and
11 the data that solve this is also outside of
12 Canada, in part, it's going to be one that is --
13 that will fail and won't make those differences.

14 So we have to consider this to be a
15 multi-jurisdictional, not even just a Canadian
16 problem, but one where all of this data can be
17 put together and that that genuinely solves --
18 makes life difficult for the criminals.

19 Q Ms. Johnson, Mr. Dent, any last points to touch
20 on?

21 A (PD) So one of the things -- and I was following
22 along with what Mr. Cohen was talking about in
23 terms how would a system like this in a country
24 like Canada, where should the data reside.
25 Because of its federated system in Canada, we're

1 a more complex structure than, say, the UK,
2 which is a single-regulator country. And that
3 creates real tangible difficulties that don't
4 exist in other jurisdictions for us.

5 Now, at the risk of reopening a discussion
6 that's already been closed, I want to go back to
7 the discussion around paying for access. There
8 are realities in Canada -- because of its
9 federated system but also because of the way
10 that governments in Canada have managed their
11 registries is not uniform either, it makes it
12 difficult to say that this data is going to be
13 housed in one centralized system and this is how
14 it's going to be shared that doesn't take into
15 account how things have evolved in the country
16 up until this date.

17 So, you know, in terms of the governments in
18 question, while they own the data, they don't
19 necessarily in every jurisdiction own the
20 registries that operate or basically run that --
21 you know, the registries that cover that data in
22 every jurisdiction.

23 A good example is Ontario and Manitoba.
24 Part of their registries in those two
25 jurisdictions are managed by a company by the

1 name of Teranet. Teranet is owned by OMERS,
2 which is the Ontario Municipal Employees
3 Retirement Fund, so it's not really owned by the
4 government per se although the government is --
5 in both of their jurisdictions is their sole
6 client. And so to basically -- you know, I
7 agree that it -- we need a model in place that
8 takes data and aggregates that data into a
9 useful platform, but that platform and how it is
10 managed, are we going to create that from
11 scratch, or are we going to use existing
12 capacity and capability that has already been
13 built up within Canada in the various registries
14 across the country?

15 You know, there's a degree of pragmatism in
16 terms of leveraging what has already been
17 developed rather than beginning anew, so to
18 speak. And so in many jurisdictions there is a
19 competency or capacity that's been developed in
20 managing data like this and in doing it in a
21 federated data model or a distributed data model
22 that would allow for that data to be shared from
23 various stakeholders in various jurisdictions.

24 A federated model requires the data to be
25 homogenous in nature. So that means you would

1 need more of a unified structure across how the
2 data is collected, what that data looks like in
3 every jurisdiction or you could go to a
4 distributed model where you would have more of
5 a -- allow for more heterogenous data to be
6 collected. So you wouldn't necessarily have to
7 drive uniform compliance across the board in
8 every jurisdiction in how they're collecting
9 that data and how they're storing that data and
10 in what formats. But there are arguments for
11 both in terms of cost, in terms of ease of use,
12 in terms of just operational ability of that.

13 So -- and I think that, you know, in terms
14 of how we break this down, whether or not it's
15 free access for everybody or we recognize that
16 there are parties that would gain more benefit
17 from gaining access to wider sources of data
18 than others. But also because they require
19 greater, broader access to data, that requires a
20 different level of investment of infrastructure.
21 And if it's just a private citizen making a
22 query, the infrastructure may not need to be as
23 complex. But if it's a large institution making
24 large data bulk requests to comply with various
25 pieces of legislation or to do whatever work

1 they need to do with that data, then a different
2 degree of investment and architecture and
3 structure is going to be necessary.

4 So it's not -- it can't be a one size fits
5 all solution either. And the more complicated
6 we make this, the less likely it's going to --
7 we're going to resolve the bigger problem in
8 Canada. And so that -- I just leave it there.

9 MR. MARTLAND: Mr. Commissioner, thank you. Those
10 are my questions for the panel. I believe there
11 are four participants with questions.

12 THE COMMISSIONER: Yes, thank you, Mr. Martland.

13 Ms. Hughes on behalf of the Province, who
14 has been allocated ten minutes.

15 MR. HUGHES: Thank you, Mr. Commissioner. We have
16 no questions for this panel.

17 THE COMMISSIONER: Thank you, Ms. Hughes.

18 Ms. George on behalf the Law Society of
19 British Columbia, who also has been allocated
20 ten minutes.

21 MS. GEORGE: Thank you, Mr. Commissioner. We also
22 have no questions for this panel.

23 THE COMMISSIONER: Thank you, Ms. George.

24 Ms. Tweedie for the BC Civil Liberties
25 Association, who has been allocated 15 minutes.

1 MS. TWEEDIE: Yes. Thank you, Mr. Commissioner.

2 **EXAMINATION BY MS. TWEEDIE:**

3 Q So first a question for the whole panel. We've
4 heard over the last two days of hearings about
5 many potential benefits of creating a beneficial
6 ownership registry; however, would you agree
7 that it's largely too early in the
8 implementation of the beneficial ownership
9 transparency regime to truly measure its impact?

10 Perhaps, Mr. Taggart, if I could ask you
11 first.

12 A (CT) Okay. Well, I think we've -- I guess
13 there's a couple of things. One is the UK
14 register's been going quite a while now, and
15 we've seen -- we have see impact there. Law
16 enforcement are using it. You know, the law
17 enforcement people I speak to find that useful.
18 It's -- journalists I've spoken to are finding
19 it useful. John Githongo, who is a veteran
20 anti-corruption investigator in Africa, one
21 of -- in Kenya, one of the highest profile
22 anti-corruption investigators in the whole of
23 Africa -- he's one of our trustees -- he finds
24 it useful and the journalist that he works with
25 finds it useful. So I think we are seeing this.

1 We're seeing -- in terms of the benefits, in
2 terms of the increased transparency, we're
3 definitely seeing that there. In terms of being
4 able to understand corporate networks, we're
5 seeing that. In the downsides, we are not
6 seeing that at all. So I think that we are
7 seeing that evidence. And the fact that
8 companies are leaving when they do have
9 increased scrutiny, problematic companies,
10 Scottish limited partnership who are
11 overwhelmingly used by criminal enterprises, and
12 we are seeing those go. So I think we are
13 seeing the benefits.

14 In terms of the -- the other aspect is that
15 we are not in a static world today. The world
16 is changing incredibly quickly, and I think that
17 there are a couple of things that are going on
18 at the moment. One is that the datarization of
19 the world. The world is becoming data.
20 That's -- you know, everyone is using data all
21 the time for good and for bad. And we are
22 seeing this in terms of the power that gives us
23 in our phones. We're also seeing that in terms
24 of our ability to be surveilled essentially from
25 our phones or our ability to for how we vote to

1 be, you know, swayed through messages with
2 things, through social networks and so on. And,
3 again, those advertisements that are doing those
4 sorts of things are coming from companies.
5 Opague, anonymous companies are exactly those
6 ones that are doing it.

7 So we are seeing ones where the datarization
8 of the world -- and actually too the
9 transactionalization of the world. The fact
10 that everything we do today is an explicit
11 transaction with a contract. We used to look at
12 a piece of paper called a map. Today we have an
13 end user licence agreement with Google and we
14 get data from them, we send data back and so on.
15 These are much more complex relationships and
16 these changes in technology and the changes in
17 data are being exploited by criminals as well
18 and by the corrupt.

19 We're seeing corporate networks become
20 massively more complex. We're seeing the
21 beginnings of programatic company formation.
22 You know, this is ones where what is happening
23 at the moment in -- you know, let's say, in
24 Canada which hasn't yet done anything on
25 beneficial ownership. Canada has stayed still

1 on that, but the world is moving on and the
2 criminals are finding ever better ways of
3 exploiting this sort of stuff.

4 So this is one where we are seeing the
5 effects, and the effects are ones where
6 societies are being left behind, law is being
7 left behind and I think that our understanding
8 of the companies that we give our information to
9 or that supply us with information, not just the
10 giant companies but those that are paying for
11 Facebook ads or for Twitter or things like that,
12 our understanding of that is also diminishing
13 massively, and so -- and with it are basic --
14 our basic human rights. So I think we do -- we
15 are seeing that. But maybe not in that -- you
16 know, but maybe on a more subtle second level
17 way. If that answers the question.

18 Q Somewhat, yes.

19 A (JC) If I could --

20 Q Yes, go ahead, Mr. Cohen.

21 A (JC) In terms of is it too soon? I mean, it's
22 the definition of what's too soon, and as
23 Mr. Taggart put out -- or put forward, we've all
24 discussed the UK persons of significant control
25 registry has been around since 2016, and so far

1 there's been response by the UK government in
2 terms of success and from the criminal side,
3 even from the corporation side, and we've seen
4 it being used and corrected, as Mr. Taggart
5 pointed out, in an iterative model. We've seen
6 other countries use it. Our colleagues at IT
7 Czech Republic managed to use the Slovak public
8 registry to identify that the president of Czech
9 Republic has allegedly used e-funds to run a --
10 or has used anonymous companies to access EU
11 funds. And so we have seen successes of it.

12 And to to the point Mr. Taggart is saying
13 about data, what has definitely been a long time
14 frame is the catchup on the globalized network
15 of finances that our law enforcement hasn't been
16 able to access even with -- if we even take it
17 out of the global perspective. If we look at it
18 into the domestic perspective, anonymous
19 ownership of companies is increasingly used by
20 criminals to buy property, to hide their illicit
21 funds. The World Bank has reported that even
22 anonymous companies or shell companies were used
23 in major corruption cases.

24 So there's this advancement of the lack of
25 transparency within the criminal world that is

1 moving more rapidly than law enforcement and
2 regulators and the public who want to know
3 what's happening to their public funds is going.
4 So maybe, you know, there about a four- or
5 five-year time span of publicly accessible
6 registries, but there's a longer time span that
7 we have of the lack of access to knowing who
8 runs those companies that we're dealing with.

9 (MJ) Maybe I could just add one more point
10 to those points that were already made. I mean,
11 I think it would be really interesting to see
12 some systematic, you know, empirical study
13 coming out of this across the EU and the UK. I
14 think it would be hugely interesting. I would
15 say, though, that there is evidence already
16 about their usefulness. And, I mean, I've been
17 involved in a variety of respects in the sort of
18 transparency movement in the extractive sector
19 and elsewhere, and I think transparency is often
20 a necessary but in and of itself insufficient
21 condition to combatting corruption and money
22 laundering and other crimes.

23 So you need the other pieces of the puzzle
24 there. But I'm -- on this aspect of
25 transparency, beneficial ownership transparency,

1 I mean, I'm very convinced that it is absolutely
2 a necessary component to combat these evils that
3 we've been talking about all morning.

4 And I think one -- you know, one thing to
5 look at is the access of this information by law
6 enforcement and the frequency of access, and
7 from what we're seeing it's very high and that
8 law enforcement agencies across these
9 jurisdictions are using this information
10 regularly in response to studies and surveys.
11 And so this is information they probably didn't
12 have access to in the past. So I think that's a
13 very telling statistic. And of course there's
14 other evidence, and I've put it into my
15 submission as well.

16 Q Thank you. Actually, Ms. Johnson, if I could
17 ask you a question. You had previously spoken
18 very briefly about the way in which beneficial
19 ownership registries could include private
20 information that could attract privacy
21 protection under the Charter and that
22 infringements on privacy would need to be
23 justified under section 1. Would -- having a
24 tiered access database, could that be one method
25 that could help ensure that infringement on

1 privacy is as minimal as possible to achieve
2 legislative objectives?

3 A (MJ) So a couple of thoughts on that. I mean, I
4 think a really critical question -- and this
5 goes back to, you know, the Charter analysis, is
6 what are the legislative objectives because of
7 course section 1 refers to -- well, section 1
8 jurisprudence always requires a legitimate
9 policy objective. So understanding what that is
10 and how the government frames that when it
11 passes the law will be really critical.

12 As we've seen, and I put it in that report
13 and also in my submission, when you look at all
14 of the potential users of beneficial ownership
15 registries be they the public and consumers and
16 creditors and people performing due diligence
17 and then a whole variety of governmental and
18 non-governmental actors, journalists and so on,
19 I mean, it could certainly be -- the benefits
20 and the legislative purposes could certainly be
21 stated very broadly. So that's just sort of one
22 point.

23 Another -- but looking specifically sort of
24 at your question, which is how do we protect the
25 privacy interests of Canadians when a beneficial

1 ownership registry is protected. My sense that
2 the list of information that Brock put up on the
3 screen earlier, you know, name, unique ID,
4 et cetera, et cetera, that this kind of
5 information doesn't attract a huge -- huge
6 concerns under the privacy regime even to
7 publicly disclose it. There are -- just to give
8 a couple of examples.

9 Currently, as we speak, there are corporate
10 registries. I know Peter Dent was talking about
11 them extensively. These already have directors'
12 names and in many cases their residential
13 addresses. This is already being publicly
14 disclosed and this has been the case for years
15 and years and years. We also have under
16 securities law, public traded companies, names
17 and other information about insiders, that is
18 people who own 10 percent or more of shares.
19 This is also being publicly published on the
20 internet.

21 So as you know, you could go to this SEDI
22 website, the insider information. You can type
23 in the name of a huge Canadian corporation, be
24 it Barrick or Bombardier or any company, and get
25 a list of those who own 10 percent of their

1 shares or greater, namely the insiders, and
2 there's quite a bit of information available.
3 So this is again justifiable in our system under
4 securities law, which has sort of similar --
5 frankly similar rationales for protecting the
6 public from fraud. And, you know, the whole
7 securities setup is to protect the public and to
8 protect investors.

9 So all this to say I think most of the
10 information, it's already out there in
11 comparable registries. So I don't think the
12 answer is -- in my view, is to restrict this
13 information from public disclosure. I think, in
14 my view, the answer is to go, to look very
15 carefully at each field and do your privacy
16 analysis on each field and say, is this
17 particular information justifiable under
18 section 1? Is this really so rationally
19 connected it must be disclosed publicly? And if
20 not, it can still be made available to those who
21 need it. But meanwhile the vast proponents of
22 the information, the type of thing that is being
23 already made available for directors and for
24 insiders of publicly traded companies could
25 easily be disclosed under the Canadian privacy

1 regime, in my view.

2 Q So just as an example, then, one example that
3 you gave in your paper of information that may
4 not receive that protection would be individual
5 citizenship or country of principal tax
6 residence; is that correct?

7 A (MJ) Yeah. I mean, I did this analysis for the
8 coalition, and they published the paper. And my
9 own conclusion is that the information -- that
10 type of information might be found to be
11 protected under Canadian jurisprudence by a
12 Canadian court. But like I said, I think every
13 legislature will have to -- you know, every
14 government will have to do its own privacy
15 analysis. But that information -- and it's
16 also -- it's not clear to me how necessary that
17 is, but it could be that it's so important -- I
18 mean, like Chris mentioned that it's been very
19 useful in another context it publish citizenship
20 information. So it might be so important, for
21 example, that it would -- it could be justified
22 under section 1.

23 Q Okay. But to be clear, you would advocate for
24 an approach where each element of information is
25 subject to a privacy analysis from the

1 government?

2 A (MJ) Yeah. I think that would be -- that would
3 make a lot of sense because I think most of the
4 information honestly would not be subject to
5 privacy protection. I think most of it there
6 would be strong justification for publicly
7 disclosing it.

8 MS. TWEEDIE: Great. Thank you, Ms. Johnson. Those
9 are all the questions I have for this panel.
10 Thank you.

11 THE COMMISSIONER: Thank you, Ms. Tweedie.

12 Mr. Rauch-Davis for Transparency
13 International Coalition who has been allocated
14 25 minutes.

15 MR. RAUCH-DAVIS: Thank you, Commissioner.

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

17 Q The first question is for, Mr. Cohen. On the
18 topic of legislative purpose, I wonder if you
19 might give an indication of the potential
20 impacts of a beneficial -- of beneficial
21 ownership transparency or the -- how it might be
22 a game changer to the money laundering
23 activities?

24 A (JC) Well, one is -- I think it creates clarity
25 with the -- as I mentioned earlier, the

1 recklessness directive under the Criminal Code
2 as a number -- or at least there could be
3 counsel who sees a recklessness provision as
4 very straight forward. But I think that, you
5 know, having this obligation of signatory
6 validation by a intermediary creates a massive
7 dissuasion for intermediaries to want to work
8 with criminals under either monetary or prison
9 penalties. So I think that giving that added
10 tool to law enforcement and for -- to hold
11 somebody accountable or even to conduct plea
12 bargains with, I think that's a really excellent
13 use of a publicly accessible registry.

14 I mean, just in terms of having the publicly
15 accessible registry being -- as we've talked
16 about throughout this panel, having -- the many
17 eyes principle, as Mr. Taggart pointed out to
18 you, being able to double-check a registry that
19 -- being able to check its flaws. I mean, the
20 non-profit Global Witness put out their scrutiny
21 of the UK registry before the UK government put
22 out their scrutiny of the registry, and they
23 pointed to many of the issues such as lack of
24 drop-down menus or lack of validation. And that
25 was really critical.

1 And to that sense that we can say sure, law
2 enforcement gets access and let's just leave it
3 to them; why should anybody else have it?
4 Having a publicly accessible registry is a
5 deterrent for those who know that there's going
6 to be many eyes but also allowing eyes from far
7 reaching areas where the money comes to from the
8 predicate offence is very important.

9 So there's a number of ways that a publicly
10 accessible registry would be a game changer in
11 the anti-money laundering field.

12 Q I think you mentioned it towards the end, but
13 not just for the offence of money laundering but
14 it goes to the underlying offence as well,
15 including things like drug trafficking,
16 organized crime and fraudulent purchases. Would
17 you agree it with that?

18 A (JC) Yes, I'd agree.

19 Q Would you agree -- are you familiar with the
20 fact that money launderers currently operate at
21 an excessively high success rate? Something --
22 like, there's a failure rate of 99 percent from
23 law enforcement investigating money laundering?

24 A (JC) Yeah, I've seen those estimations of the
25 inability of law enforcement to actually follow

1 money laundering because of all the reasons of
2 opacity, of the fact that this is a global
3 systems-level criminal activity that works
4 between jurisdictions that don't always share
5 information. I think it's -- we cited it in our
6 2016 report where we looked at Vancouver real
7 estate. I think it's -- the success rate is --
8 compared to other crimes for the RCMP is vastly
9 lower in money laundering compared -- to solving
10 those crimes compared to other crimes where they
11 have a higher success rate because of these very
12 issues, which law enforcement does complain
13 about, and their access to solve it.

14 Q And I suppose part of the difficulty with
15 investigating this or part of the difficulty --
16 or part of the reason for that failure rate is
17 the difficulty in enforcement, the difficulty
18 the RCMP have in investigating these types of
19 crimes?

20 A (JC) Yeah, exactly. As I point to, you know,
21 their success rate in other criminal areas is
22 much higher compared to money laundering for the
23 very -- I mean, the idea that the RCMP to
24 investigate even the BC registry or some of the
25 other registries in Canada, that they also have

1 to pay when conducting an investigation -- we
2 found that out in some of our research for the
3 implementing a beneficial ownership registry
4 report. I was actually astounded by that fact.

5 Q And would you agree with me that in order to be
6 effective or in order to assist law enforcement
7 in raising their success rate, a proper registry
8 must include both a robust client identification
9 verification system and proper sanctions for
10 fraudulent or negligent reporting?

11 A (JC) Yeah, I'd agree. And verification,
12 validation of information is hugely important
13 especially because we're putting an emphasize on
14 this registry and its usefulness. It's --
15 without the -- it's the easy phrase of garbage
16 in, garbage out. If there isn't quality
17 verification and validation, we've created a
18 registry that will not fulfill its purpose and
19 could actually be a detriment to ourselves.

20 Q Thank you. My next question's for Mr. Taggart.
21 Mr. Taggart, you've often this morning
22 mentioned -- or referenced the UK PSC registry.
23 I take it that it is -- the UK has kind of been
24 a world leader in establishing that. Would you
25 agree with that?

1 A (CT) I would, yes.

2 Q But one of the problems is that their client
3 identification, verification and validation
4 system, it's not effective. Would you agree
5 with that?

6 A (CT) I would say that, yes, it's -- well, I
7 wouldn't say it's wholly ineffective, but it
8 leaves a lot to be desired. Put it that way.

9 Q And what -

10 A (CT) There's a lot of potential improvement
11 there. And to be fair to them, they're working
12 on that improvement at the moment, so ...

13 Q Right. So before when you said that the UK
14 system, they should be admired for taking the
15 bold first step but it's not a perfect system,
16 this is probably one of the inadequacies you
17 were referencing in that type of evidence;
18 right?

19 A (CT) Absolutely. So I think that there's a
20 number of aspects. And, you know, I mentioned
21 at the beginning about -- when we were talking
22 about -- or mentioned about an hour ago when we
23 were talking about validation, they didn't
24 validate fields. You know, they just let people
25 put in a nationality, just type something in,

1 and so you got lots of different ones there. It
2 made it very hard to look at this data, to find
3 anomalies, for the register to do it. They also
4 didn't have anybody that was actually internally
5 in the register that was actually analyzing the
6 data and trying to identify suspicious activity
7 essentially in the register. Now they have a
8 team there that work with civil society, but,
9 you know, take input from them and work with law
10 enforcement as well.

11 And so, you know -- and then there is the
12 question of verification. Now, there's a
13 challenge, you know, in a number of ways. One
14 is which is that the register was always a
15 self-submitted register. Historically it was a
16 self-submitted register and the changes that
17 they're suggesting to make to require
18 verification so that when you become a director
19 of a company you have to disclose, for example,
20 you know, ID that proves that, who you are, that
21 that's really your name, things like that.
22 That's actually a big step away from
23 historically this being a matter of, if you
24 like, submissions and public statements that
25 we're making.

1 Now, you know -- and so for the register to
2 do this, for the government to be moving down
3 that route is actually a big step to take. And
4 others -- I suspect the BC register is a similar
5 one which is taking things on face value. And
6 so, you know, this is a journey to walk and that
7 what would be a real shame is if the -- that
8 those that were coming after UK Companies House
9 with beneficial ownership registers started at
10 the same point rather than having learned those
11 lessons that has been, and one of those is about
12 the importance of verification. If you ask me
13 which would I rather have, an unverified
14 register tomorrow with this information where
15 people making attestations to what the -- who
16 the owners are or a perfect one in -- you know,
17 "perfect" in inverted commas -- in five years
18 time, I'd definitely take the shorter term
19 because that gives you scope for improvement,
20 scope for learnings. And actually just that --
21 when I've spoken to law enforcement just that
22 act of people lying on a public document is --
23 provides intent and so on and provides a useful
24 case when they're putting together an
25 investigation and so on.

1 So I would urge not to try to make perfect
2 the enemy of the good, but absolutely, you know,
3 if BC goes down this route or Canada goes down
4 this route, it should be learning from the UK
5 experience, looking at where -- and from other
6 registers' experience around verification and
7 around how this can be done. And these days
8 it's actually really easy. You know, can get a
9 bank account in -- I got a bank account or a
10 debit card account, and I did it basically by
11 showing the camera. You know, I had to show I
12 had ID, like a passport and stuff, but I could
13 show my face. And that sort of recognition,
14 it's very, very high quality. It makes this
15 sort of thing really easy today and it doesn't
16 need to make it expensive either.

17 And I don't think we're talking even, you
18 know, the providing bulk data access to
19 something that if BC register can't do it and
20 they've got great people -- technical people
21 doing things like OrgBook and so on. If they
22 can't do that that for a few thousands dollars,
23 you know, then there's something going wrong.
24 You know, 10- or 20- or \$15,000. Providing bulk
25 data files is an inexpensive thing to do.

1 So these are not trivial things that we are
2 talking about. They do take thought. They do
3 take some work. They're going to be ones where
4 it's not always obvious which is the right
5 approach to take. But learn from others and
6 share the experiences. That would be my urging.
7 And not to try to make perfect the enemy of the
8 good.

9 Q Right. But when you say it's not always obvious
10 on what steps to take, in this case it is
11 obvious that client identification verification
12 is of critical importance to the success of a
13 corporate beneficial ownership registry,
14 wouldn't you agree?

15 A (CT) I would say it is -- you know, if you have
16 a gold, silver, bronze standard, if you want a
17 gold standard, absolutely, you must have that.

18 It's not that everything else is useless,
19 but if you want to do this properly, then you
20 should have this. Absolutely. There is still
21 the challenge of -- you know, of whether that
22 person actually does control the company. And,
23 again, that is one where, you know, the --
24 making this properly available as public, this
25 is -- and there are other routes to going down

1 that route. Actually, you know, you could say
2 where things are going in blockchain and other
3 DLT, distributed ledger technology, is actually
4 share registers being digital and immutable and
5 that could prove the proof that you would
6 need -- to provide the proof that you need to
7 say that this person actually does at least own
8 those shares, which is a hard thing to prove
9 today.

10 So there are ways that can be -- you know,
11 there are further steps that can be done even
12 beyond just the identity -- proving the
13 identity. But yes, I a hundred percent agree
14 that that's the gold standard.

15 Q So if it's not possible tomorrow, would you
16 agree that it's imperative a registry that is
17 established be allowed sufficient flexibility to
18 adapt to improvements in technology or
19 improvements in manners in which you could
20 verify client identification?

21 A (CT) Absolutely. And it needs to take this
22 approach. They should be thinking just like
23 every other part of the internet in a digital
24 world is thinking, how can we be better next
25 year? How can we better next year?

1 Q Thank you. The next topic I wanted to ask you
2 about is in terms of access to information on
3 the beneficial ownership registry. I take it
4 you'll agree with me that setting up the access
5 regimen should always have an eye to an
6 international focus, and that's because the
7 majority of laundered funds in Canada and
8 British Columbia are coming from authoritative
9 states and international players; is that
10 correct?

11 A (CT) Absolutely. A hundred percent.

12 Q And so part of that is that the registry needs
13 to be built to allow public reporting and
14 whistleblowing from all over the world.
15 Wouldn't you agree with that?

16 A (CT) Yes, I would.

17 Q And so to your mind, and maybe I'll open this up
18 to the panel at large as well, is what features
19 would accomplish that goal of international
20 focus?

21 A (CT) So I think there's a couple of things here.
22 One is, again, seeing these things as networks.
23 And I'd make one point before I go into this
24 which is when we are talking about -- I've seen
25 reference to, you know, foreign nationals being

1 a danger, you know, and I'm not saying that
2 that's not a case. But when I've spoken to
3 civil society in developing countries, you know,
4 or even the diaspora, what they're concerned
5 about, whether it's, you know, Nigeria or the
6 DRC or wherever, you know, they're concerned not
7 about the extraterritoriality of their -- of the
8 bad guys in their country; they are concerned
9 about their families that are suffering under
10 corrupt regimes and so on and under ones where
11 there isn't the rule of law and where the whole
12 system has been undermined by corruption.

13 So the international regime, if you really
14 want to -- if Canada wants to be a country
15 that's moving the whole world to a safer, more
16 secure, more lawful place, then it absolutely
17 needs to have that international aspect. Where
18 those things can come from, you know -- those
19 can come from, it can come from somebody that --
20 it can coming from somebody that just can read,
21 you know, the original script in the language,
22 for example, or can see that that -- what that
23 addresses.

24 It can actually be from a company that --
25 one of its competitors even. You know, a lot of

1 whistleblowing actually comes from -- in public
2 contracting comes from losing companies. So it
3 can come from a whole wide range. It can even
4 come from law enforcement that don't have the
5 power to act locally, for example. So it can
6 come from all these different actors.

7 The mechanism is fairly straight forward.
8 At its base level it's a question of, you know,
9 is this information wrong; is there a problem
10 with this information; tell us, and then having
11 that system. The UK has already established
12 something like that and it's getting results
13 from that. But there's also ones where, you
14 know, we've identified some systemic problems
15 because we've got access to the underlying data
16 as actually anyone would have. You know, it's
17 not just OpenCorporates but others have got --
18 you know, anyone's got access to the online
19 data.

20 We sense it's systemic problems of -- as
21 have Global Witness. You know, because they
22 have taken an active view with, we want to
23 engage with people; we want to -- people to tell
24 us problems, then -- you know, we want you to
25 tell us how they think people are going to be

1 misusing companies and so on. That engagement
2 has really moved things along and, you know, we
3 meet with companies at least every six months to
4 talk about those things, and I know other
5 organizations do as well.

6 And then, finally, I would say that
7 actually, just picking up on something that
8 Peter talked about earlier, you know, you might
9 not actually want to tell the register
10 immediately, but you might tell law enforcement.
11 You might want to know that -- actually that --
12 you know, you might want to be able to build up
13 an investigation. That fact that there's some
14 bad data on there could be useful in terms of
15 building up that investigation. And whether
16 it's following law enforcement, local law
17 enforcement or due diligence professionals who
18 are going to be tipping off law enforcement when
19 they pull together some case and so on, then I
20 think that, you know, there's some opportunities
21 there. And it's not just about fixing bad data;
22 it's about making life difficulty for the bad
23 guys.

24 Q And to facilitate the engagement of everyone, as
25 you just referenced, wouldn't it been imperative

1 that information like citizenship and country of
2 origin be publicly available?

3 A (CT) Personally I think so, and I don't -- but
4 I'm not coming from a Canadian context. And I'm
5 not sure -- I'm not aware of either the
6 constitutional issues or other factors there.
7 But it's been happening in the UK and it's not
8 been -- and there's not been difficulties there.
9 And certainly I know from people who are using
10 the States to filter down, you know, and to
11 screening and so on, or to find problems in the
12 data that -- not necessarily in the data, but
13 problems that the data uncovers by creating
14 actually AI generated networks of how companies
15 and criminal syndicates are operating together.
16 Those fields have been really important in terms
17 of doing that.

18 But as I said, I'm not coming from a
19 Canadian legal perspective, so I can't speak on
20 that element.

21 Q Thank you. I'd like to move on to the issue of
22 sanctions with the panel. So I take it from the
23 evidence this morning for the registry to be
24 effective there needs to be meaningful sanctions
25 for non-compliance.

1 And perhaps I'll put this question to
2 Mr. Cohen again. In the LOTA, the beneficial
3 registry -- land ownership registry in BC that's
4 to take next effect this spring, there's an
5 offence for false declaration of beneficial
6 reporting. Are you familiar with that,
7 Mr. Cohen?

8 A (JC) Sorry, I was on mute. I'm aware of it.

9 Q Yeah. And so I take it that you would see that
10 as being imperative for -- as a tool for the
11 corporate ownership registry as well; right?

12 A (JC) False declaration, yes.

13 Q Yes. And with the false declaration, that's
14 where these sanctions should come into place;
15 right? Like heavy fines up to jail time, I
16 believe was your evidence this morning.

17 A (JC) Yeah, dependent on the case. I think, you
18 know, Peter Dent pointed out that there are
19 errors that are conducted that are
20 non-malicious. And I think the experience from
21 the UK registry is to give -- I think one of
22 their recommendations was about a one year kind
23 of rollout phase because there's going to be
24 small-, medium-sized enterprises that are just
25 engaging with us for the first time.

- 1 But that said, based on law enforcement
2 being able to make a case and seeing the
3 evidence or, you know, based on a major red
4 flag, yeah, that would be a major penalty that
5 we would recommend.
- 6 Q Would you agree that, yeah, for the most
7 egregious actions or egregious offences jail --
8 significant jail time is warranted?
- 9 A (JC) Yeah, I would see that as one of the
10 possible sanctions.
- 11 Q And necessary for an effective registry; right?
- 12 A (JC) Yes.
- 13 Q Yes. And are you familiar that the
14 BC Securities Act has a similar type of system
15 where they can include up to a \$5 million fine
16 and five-year prison sentence for making a false
17 or misleading statement in a filing?
- 18 A (JC) I've been made aware of that, yes.
- 19 Q Yes. So it's nothing new.
- 20 A (JC) Yeah.
- 21 Q I take it you'd agree with that?
- 22 A (JC) Yeah, it's nothing new. There's a
23 precedence for it.
- 24 Q Thank you. Mr. Cohen, you touched on the
25 Pan-Canadian registry towards the end of the

1 evidence this morning. I'm wondering if you
2 have any suggestions for best practice on how
3 that type of system could be set up, and if you
4 could elaborate on that.

5 A (JC) Yeah, so within our reports we put out two
6 different kinds of models as recommendations.
7 And drawing on Peter Dent's point about
8 making -- building up something from scratch
9 versus what we have, I take that point that
10 let's look at what's available, but I would say
11 we still need to bring up -- you know,
12 jurisdictions that have the weakest forms of
13 registries, there needs to be support from them,
14 probably funding from the federal government, to
15 bring those registries up to some kind of
16 standard.

17 So once you have different standards there's
18 the federated distributed architecture. In that
19 case provinces and territories independently
20 collect the beneficial ownership data from
21 businesses and through an API the data is
22 provided to a central repository. So that can
23 be part of what Peter was discussing that
24 there's still the different registries that
25 hopefully are up to some kind of standard or at

1 least, you know, as Chris Taggart as pointed
2 out, keep moving towards some kind of standard.
3 And then once you have that, you have the tiered
4 system, make data available to the public and
5 select government agencies.

6 And so this enables federal and provinces --
7 this model enables the federal and provinces and
8 territories to better control what data is
9 included and it enables the federal, provinces
10 and territories to determine when to collect the
11 beneficial ownership data. So do they want to
12 do it upon incorporation or during tax filing.

13 You know, there is the potential for a loss
14 of uniformity with that. Potentially we do have
15 to factor through -- as Peter pointed out, let's
16 not make -- I think we've heard a lot of that:
17 let's not make the perfect the enemy of the good
18 and what do we have to work with to actually get
19 a registry launched. It's something definitely
20 to consider. And then there's also the idea of
21 a centralized architecture and this way
22 businesses directly report beneficial ownership
23 data to a central registry. And the tiered
24 system makes the data available to different
25 actors, whether it's the public or law

1 enforcement.

2 And the provinces and territories access the
3 beneficial ownership data via cloud network and
4 central registry, and then they can choose to
5 add that information into their current
6 registries. So there's one entity just making
7 the registry who would -- then everyone feeds
8 down that information, and it enables a certain
9 amount of quality control. There's -- it's
10 easier to manage the quality. It could also
11 potentially reduce cyber threat through minimal
12 amounts of data transfer.

13 So there's pros and cons to both of those
14 models. I kind of leave it to an open
15 discussion moving forward to hear more from
16 technical -- as this conversation moves forward
17 nationally and provincially as to what the
18 better model for Canada's needs are. You know,
19 I've personally been swayed by the centralized
20 model although I heard Peter's argument on let's
21 use what we have available, and those are
22 persuasive arguments. So I think we could still
23 have this conversation going forward.

24 Q Thank you.

25 MR. RAUCH-DAVIS: I'm mindful of my time,

1 Mr. Commissioner. I just have a few more
2 questions for Ms. Johnson. I'll be brief.

3 Q Ms. Johnson, trusts are explicitly excluded from
4 your report before the commission. Is that
5 correct?

6 A (MJ) Yes, it is.

7 Q Yeah. But you would agree with me that trusts
8 are also used to launder money and in tax
9 evasion and tax avoidance; right?

10 A (MJ) I mean, I don't have a lot of data around
11 it, but I certainly imagine that to be the case.

12 Q I wonder if anyone from the panel could agree
13 with that statement that corporate trusts,
14 personal trust, family trusts are also used to
15 launder money and engage in activities such as
16 tax evasion or tax avoidance?

17 A (PD) It's true. That is the case, yes.

18 Q Thank you, Mr. Dent. So, Mr. Dent, wouldn't you
19 agree there would be a risk that money
20 laundering activity would just switch from
21 corporations to trusts if there's not a similar
22 type of trust registry?

23 A (PD) Yes. I mean, it's the argument of the path
24 of least resistance. So basically it would move
25 to the path of least resistance, and if trusts

1 are the next vehicle to be used, then you would
2 see more active use of trusts in that manner.

3 Q And what about partnerships? Would
4 partnerships -- would all partnerships be caught
5 by the terms of the registry?

6 A (PD) Well, no, not all partnerships would be
7 caught. You know, it depends on the type of
8 partnership as well. There are different
9 partnership structures, obviously. I'm not
10 arguing that partnerships should not be part of
11 a public registry; I'm just saying that there
12 are different types of partnerships that exist.
13 There are small partnerships -- just like
14 there's different trusts. There are small
15 partnerships, then there are widely held
16 partnerships as well, and it's unlikely that any
17 one partner in a widely held partnership would
18 exceed a 10 percent or a 25 percent threshold,
19 whatever the threshold was sought.

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

21 THE COMMISSIONER: Thank you. Anything arising from
22 that Ms. Tweedie?

23 MS. TWEEDIE: Yes. Just a question for Mr. Cohen.

24 **EXAMINATION BY MS. TWEEDIE (continuing):**

25 Q So if someone is deliberately misrepresenting

1 information on a beneficial ownership registry,
2 you would agree that this would likely be for an
3 illicit purpose, money laundering, fraud ...

4 MS. TWEEDIE: Sorry, Mr. Rauch-Davis, you're not --
5 there you go. Sorry.

6 Q Mr. Cohen, so you would agree that if you're
7 misrepresenting information on a beneficial
8 ownership registry, it would be to further
9 illicit activity, money laundering, fraud, the
10 issues that we've discussed that a beneficial
11 ownership registry is meant to combat; is that
12 correct?

13 A (JC) I would agree that's a highly likely
14 reason, yes.

15 Q And that if someone were to be implicated for
16 money laundering or fraud, they would face
17 punitive sanctions arising out of that criminal
18 activity; correct?

19 A (JC) Correct.

20 Q So my question is how -- in what circumstances
21 would you justify not just jail time but
22 significant jail time for a violation of the
23 beneficial ownership registry requirements?

24 A (JC) I say it would have to be based on the
25 case. I do not have a scaled system at the

1 moment which would constitute significant jail
2 time, but let's take an example potentially of
3 major drug or human trafficking organizations
4 and somebody was the intermediary who knowingly
5 falsified information on a beneficial ownership
6 registry to allow -- to help facilitate that
7 activity to occur. I would say that those are
8 highly egregious crimes that would get
9 significant jail time. You know, if the
10 criminal would get significant jail time, why
11 wouldn't their money person or their lawyer, if
12 they knowingly helped facilitate that crime?

13 There's debate around large-scale corruption
14 and what defines that, so would it be somebody
15 -- a kleptocrat stealing millions or even
16 billions of dollars from their own people that
17 was meant to go towards education and health and
18 other issues of inequality, would that lead to
19 significant jail time if there was the
20 possibility of jurisdiction? That would be a
21 possibility.

22 Q So it's your opinion that in addition to any
23 penalties imposed for being implicated in these
24 crimes, for instance even in the case of the
25 intermediary, I imagine there would be charges

1 associated with facilitating fraud or money
2 laundering and they would go through the
3 criminal process. And in your opinion in
4 addition to that we should also have jail time
5 for breaches of -- for paperwork violations of
6 the beneficial ownership registry?

7 A (JC) In egregious cases knowing falsification,
8 yes.

9 Q Okay.

10 A (CT) I guess I would just add to that in terms
11 of we want this to be, you know, a register of
12 record that's trusted and we want people to be
13 able to trust this and take this seriously. And
14 I guess the question is is what sanctions
15 would -- what should be the sanctions should
16 that not happen.

17 And to James's point earlier, you know, we
18 don't want this to be a cost of doing business,
19 and it may be that I don't know enough about
20 either the law in Canada nor some of the --
21 exactly how different offences are prosecuted.
22 But it strikes me that, one, there should be --
23 it should be treated as a serious act to
24 knowingly falsify this thing in and of itself.
25 Just because you -- you know, if you run down

1 somebody fleeing from a scene of a crime, that
2 running down somebody doesn't get -- you know,
3 it doesn't get ignored because you have --
4 because you have committed a robbery or
5 something like that. You know, this should be
6 an offence and it should be treated as a serious
7 offence.

8 Now, the question is is those who are going
9 to be doing that, what should be the sanctions
10 and there are various ones, you know, in terms
11 of both seizing their ownership -- in the UK the
12 court may order the sale of the -- of their
13 interests in the company and that when a person
14 is a legal entity, we should be thinking as well
15 when the beneficial owner goes to a legal entity
16 and the legal entity makes that submission, for
17 example, who is the -- what's the context there,
18 and in that case we have it in the UK
19 schedule 1(b) says where the person is a legal
20 entity, an offence is also committed by every
21 officer of the entity who is in default.

22 So you can see ones where when you've got
23 legal entities that are the actors there, that
24 actually getting to those people and finding
25 several -- you know, making them treat this as

1 a -- making the world, you know, understand that
2 this is a serious act, there should be
3 consequences to that.

4 I personally don't think that -- I don't
5 think it's unreasonable in serious cases for
6 that to be a deprivation of liberty,
7 particularly if the fine -- unless there is an
8 unlimited fine as well and assets can be done.
9 You know, because it may be that you've got
10 someone that's a billionaire, you could fine
11 them a million; they don't care. So I think
12 there does need to be something -- we could
13 discuss where that lies, but I think we need
14 to -- it does feel right that this is a serious
15 offence of somebody deliberately falsifying such
16 a register.

17 MS. TWEEDIE: Thank you, sir. That is all. Thank
18 you.

19 THE COMMISSIONER: Thank you, Ms. Tweedie.

20 Mr. Martland, do you have anything arising?

21 MR. MARTLAND: No, thank you, Mr. Commissioner.

22 THE COMMISSIONER: All right. Thank you.

23 All right. Well, thank you to the members
24 of panel for the time and care you've taken in
25 appearing before the commission and providing

1 the benefit of your expertise. I think
2 probably, Mr. Taggart, you have worked fairly
3 late into the evening on our behalf, and I'm
4 grateful for that as well. So you're now all
5 excused from further testimony.

6 And I think, Mr. Martland, unless I hear
7 from you, we'll simply adjourn now until
8 tomorrow morning at 9:30.

9 MR. MARTLAND: Thank you.

10 THE WITNESS: (CT) Thank you for the opportunity to
11 present.

12 THE WITNESS: (PD) Thank you.

13 THE COMMISSIONER: Thank you.

14 THE WITNESS: (JC) Thank you.

15 THE REGISTRAR: The hearing is adjourned until
16 December 1st, 2020, at 9:30 a.m. Thank you.

17 **(WITNESSES EXCUSED)**

18 **(PROCEEDINGS ADJOURNED AT 1:36 P.M. TO DECEMBER 1,**
19 **2020)**

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